

3 FAM 6100 Appendix B OLD 3 FAM 670, RETIREMENT

(TL:PER-310; 03-01-1996)

At this time the new material which would be contained in this subchapter have not been cleared for issuance. Accordingly the old 3 FAM version, which is the current version in force is issued as Appendix B to this chapter. The most recent issuance of this material was done under TL:PER 33, dated 5-31-75, TL:PER-514, dated 2-8-82, and TL:PER-220, dated 3-21-68.

This applies to Foreign Service and Civil Service employees of the Department of State only.

3 FAM 670 RETIREMENT

3 FAM 671 THE FOREIGN SERVICE RETIREMENT AND DISABILITY SYSTEM

3 FAM 671.1 Authorities

*(TL:PER-33; 5-31-85)
(State Only)*

The, regulations, contained in sections 3 FAM 671 through, 3 FAM 673, are, prescribed under the following authorities:

a. Chapter 8 of the Foreign Service Act of 1980 (hereafter referred, to as the Act).

b. Any Executive order issued under authority of section 827 of the Act including No. 12289 of February 14, 1981.

3 FAM 671.2 Definitions

*(TL:PER-33; 5-31-85)
(State Only)*

For purposes of sections 3 FAM 671, 3 FAM 672, and 3 FAM 673:

a. “ Act” means the Foreign Service Act of 1980.

b. "Agencies" means, the, Department, of, State, the Agency for International Development (AID), the U.S. Information Agency (USIA), the Foreign, Commercial, Service (FCS) of the Department, of, Commerce, the Animal, and, Plant, Health, Inspection Service (APHIS) and, the, Foreign Agricultural, Service (FAS) of the Department of, Agriculture, and, the Peace Corps (PC).

c. "Annuitant" means, any person including, a, former, participant, or survivor, who meets all requirements for an annuity from the, Fund, under the, provisions of the Act of 1980, or any other law and, who, has, filed claim therefor.

d. "Basic salary" means the salary fixed by law or administrative action before, deductions and exclusive of additional compensation of any, kind. It, includes the salary fixed by sections 401, 402, 403, and 406, of, the Act, and, salary, incident to assignment under section 503, of, the, Act. Basic salary excludes premium pay for overtime, night, Sunday and holiday work, allowances, post and special differentials, and charge pay.

e. "Chief, of, Mission" means, a principal, officer, in, charge, of, a diplomatic, mission, of the United States or of a, United, States, Office abroad, which has been designated diplomatic in nature or any, member, of the, Foreign, Service assigned under the terms of the Act, to, be, charge d'affaires or head of such a mission or office.

f. "Child" means, except, with reference, to, lump-sum, payments, an unmarried, child, under, the age of 18 years, or, such, unmarried, child regardless, of age who because of physical or mental disability, incurred before, age 18 is incapable of self-support. In addition to the offspring of the participant, the term includes:

(1) An adopted child;

(2) A, stepchild or recognized natural child who received more, than one-half support from the participant; and

(3) A, child who lived with and for whom a petition of adoption, was filed by a participant, and who is adopted by the surviving spouse of the participant after the latter's death.

"Child" also means an unmarried student under the age of 22 years. For this, purpose, a child whose twenty-second birthday occurs before July, 1 or, after August 31 of a calendar year, and while a student, is deemed to have become 22 years of age on the first day of July after the birthday.

g. "Court" means any court of any State or of the District of Columbia.

h. "Court Order" means any court decree of divorce or annulment, or any court ordered or approved property settlement agreement incident to any court decree of divorce or annulment.

i. "Department" means the Department of State.

j. "Divorce" means the dissolution of a marriage by a final judicial decree of divorce or annulment.

k. "Expressly provided for" means a direction by a court order to divide a member's Foreign Service Retirement benefits or survivor benefits and awarding a portion of such benefits to an eligible beneficiary.

l. "Former spouse"¹ means a former wife or husband of a participant or former participant who was married to such participant for not less than 10 years during periods of service by that participant which are creditable under section 3 FAM 671.5 provided the participant was making contributions to the Fund under section 3 FAM 671.4-1 during some portion of such service, and, except with respect section 3 FAM 673.5-2e, provided the divorce occurred after February 15, 1981. For this purpose, a former spouse shall not be considered as married to a participant for periods assumed to be creditable under section 3 FAM 672.3-1c in the case of a disability annuity or section 3 FAM 673.5-6b in the case of a death in service. A former spouse will be considered married to a participant for any extra period of creditable service provided under section 3 FAM 671.5-14 for service at an unhealthful post during which the former spouse resided with the participant. See section 3 FAM 676.7-3 for procedures to determine this extra period of marriage.

m. "Fund" means the Foreign Service Retirement and Disability Fund.

n. "Military and naval service" means honorable active service:

(1) In the Armed Forces of the United States;

(2) In the Regular or Reserve Corps of the Public Health Service after June 30, 1960; or

(3) As a commissioned officer of the National Oceanic and Atmospheric Administration or predecessor organization after June 30, 1961.

However, this definition does not include service in the National Guard, except when ordered to active duty in the service of the United States.

o. "M/MED" means the Department's Office of Medical Services.

p. "Participant" means a person as described in section 3 FAM 671.3.

q. "PER/ER/RET" means the Department's Retirement Division in the Bureau of Personnel.

r. "Previous spouse" means any person formerly married to a principal, whether or not such person qualifies as a former spouse under paragraph l of this section 71.2

s. "Principal" means a participant or former participant whose service forms the basis for a benefit under chapter 8 of the Act for a spouse, previous spouse, or child of a participant.

t. "Pro Rata Share" means, in the case of any former spouse of any participant or former participant, a percentage which is equal to the percentage that (1) the number of years and months during which the former spouse was married to the participant during the creditable service of that participant is of (2) the total number of years and months of such creditable service. When making this calculation, item (1) is adjusted in accordance with paragraph l of this section and both are adjusted under section 3 FAM 671.5-17. In the total period, 30, days constitutes a month and any period of less than 30 days is not counted.

u. "Spousal agreement" means any written agreement between a participant or former participant, and the participant's spouse or former spouse.

v. "Student" means a child regularly pursuing a full-time course of study or training in residence in a high school, trade school, technical or vocational institute, junior college, university, or comparable recognized educational institution. A child who is a student shall not be deemed to have ceased to be a student during any interim between school years, semester, or terms if the interim or other period of nonattendance does not exceed 5 calendar months and if the child shows to the satisfaction of the Retirement Division (PER/ER/RET) that the child has a bona fide intention of continuing to pursue such course during the school year, semester, or term immediately following the interim.

w. "Surviving spouse" means the surviving wife or husband of a participant or annuitant who, in the case of death in service or marriage after retirement, was married to the participant or annuitant for at least 1 year immediately preceding death or is the parent of a child born of the marriage.

x. "System" means the Foreign Service Retirement and Disability System.

3 FAM 671.3 Participants

(TL:PER-33; 5-31-85)

(State Only)

The following persons are participants in the System:

a. Members of the Service serving under a career appointment or as a career candidate under section 306 of the Act (1) in the Senior Foreign Service, or (2) assigned to a salary class in the Foreign Service Schedule;

b. Any person not otherwise entitled to be a participant who has served as chief of mission or an ambassador at large for an aggregate period of 20 years or more, exclusive of extra service credit for service at unhealthful posts, and who has paid into the Fund a special contribution for each year of service;

c. Any individual who was appointed as a Binational Center Grantee and who completed, prior to February 15, 1981, at least 5 years of satisfactory service as a grantee, as determined by the Director of Personnel of USIA or under any other appointment under the Foreign Service Act of 1946, as amended, who has paid into the Fund a special contribution under section 3 FAM 671.4 for such service;

d. Members of the Service who transfer to a public international organization and make contributions to the Fund under the authority of subchapter IV, chapter 35, title 5, U.S. Code; and

e. Any person converted to the competitive service under section 2104 of the Act who elects to participate in the System under section 2106(b)(1) or (2) shall remain a participant so long as the person is employed in an agency which is authorized to utilize the Foreign Service personnel system.

NOTE.--If an employee who is a participant in the System is appointed by the President, either with or without the consent of the Senate, to a position in any agency of the U.S. Government, any U.S. delegation or mission to any international organization, any international commission, or in any international body, such an officer shall not, by virtue of acceptance to such an appointment, lose status as a participant in the System.

3 FAM 671.4 Contributions to Fund

3 FAM 671.4-1 Amount of Contributions

(TL:PER-33; 5-31-85)

(State Only)

Each participant is required to contribute 7 percent of basic salary to the Fund. The contributions from salary, together with the matching contributions from the salary appropriation, are deposited by the agencies in the Treasury of the United States to the credit of the Fund.

3 FAM 671.4-2 Periods of Leave Without Pay and Military Service

(TL:PER-33; 5-31-85)
(State Only)

Contributions may not be made for any periods of leave without pay except (a.) A participant who enters on approved leave without pay to serve as a full-time employee of an organization composed primarily of Government employees may, within 60 days after entering on that leave with pay, pursuant to section 3 FAM 671.5-6 file with the employing agency an election to receive full retirement credit for such periods of leave without pay and arrange to pay concurrently into the Fund through the employing agency, amounts equal to the retirement deductions and agency contributions on the salary rate that would be applicable if the participant were in a pay status. (b.) A participant who, while on approved leave without pay, serves as a full-time paid employee of a Member of office of the Congress shall continue to make contributions to the Fund based upon the Foreign Service salary rate that would be in effect if the participant were in a pay status. The participant's employing office in the Congress shall make a matching contribution (from the appropriation or fund which is used for payment of the salary of the participant) to the Treasury of the United States to the credit of the Fund. All such periods of service for which full contributions are made are fully creditable (see section 3 FAM 671.5-16). (c.) A participant, who, while on approved leave without pay, serves under a PIT appointment shall be subject once again to have Foreign Service retirement contributions withheld from salary.

3 FAM 671.4-3 Special Contributions

(TL:PER-33; 5-31-85)
(State Only)

a. A participant may elect to make a special contribution to obtain credit for prior service for which refunds (lump-sum payments) have been made (see section 3 FAM 671.5-9) or to avoid a reduction in the participant's annuity for failure to make the contribution as explained in section 3 FAM 673.3. A special 71.4-3 contribution equals 5 percent of the individual's basic annual salary for each year of service for which credit is sought from July 1, 1924 to October 16, 1960; 6-1/2 percent from October 17, 1960 to December 31, 1969; and 7 percent on and after January 1, 1970. Special contributions will include interest computed from the midpoint of the service in question, or from the date when the refund was paid, to the date of payment of the special contribution or commencing of annuity, whichever is earlier. Interest is compounded at the rate of 4 percent annually to December 31, 1976, and at 3 percent annually thereafter. No interest shall be charged on special contributions for any period of separation from Government service which began before October 1, 1956.

b. A person who becomes a participant in this System by direct transfer without a break in service from another retirement system for Government civilian employees does not have to make a special contribution because contributions to the other fund will be transferred automatically, and full credit will be granted for all service for which contributions are so made. A person who becomes a participant in this System after a break in service under some other retirement system for Government civilian employees or after receiving a lump-sum payment under this or another retirement system may determine the amount of the special contribution owed by submitting Form OF-141, Application for Service Credit (3 FAM 671 Exhibit 671.4-3b) to the employing agency. Submission of this form will not obligate the participant to make the contribution but will assure that proper recognition is given in the annuity computation for all prior service.

c. Upon receipt of Form OF-141, the agency will obtain from the Office of Personnel Management, or other agency, if necessary, verification of all service claimed. The agency will then inform the participant in writing of the amount of the contribution required for the prior service.

d. A participant may elect to make a special contribution to cover all or a portion of prior civilian service. However, if purchase is elected for only a portion of prior service or if payment is not completed at the time annuity payment begins, the contribution that is made shall be applied first to the latest service completed prior to becoming a participant for which a refund (lump-sum payment) was made and then to the most recent service completed for which no retirement contributions were made. If annuity commences before a special contribution is fully paid, a participant or survivor may elect to have the net annuity (as defined in section 3 FAM 671.8-2b) offset against the amount owed to cover the balance of the special contribution provided the total amount owed can be collected from accrued annuity in 4 months or less. If the amount owed cannot be collected within 4 months, the balance of the special contribution must be paid in a lump-sum prior to the commencement of annuity payments, or the annuity will be computed without benefit of the unpaid contribution.

e. All remittances by personal check for this purpose shall be made payable to the participant's agency and shall be for U.S. dollars, payable at par, at a banking institution in the United States (checks drawn on foreign banking institutions are not acceptable). These remittances shall be forwarded to the participant's agency: Cashier Unit, and the transmittal letter, or memorandum subject: AFIN, Office of Finance, shall clearly indicate that the remittance is to purchase Foreign Service retirement credit and fully identify the person to be credited. Allotments of pay for this purpose shall be marked: "for deposit in the Foreign Service Retirement and Disability Fund for purchase of prior service credit for (name of participant to be credited)." (See 4 FAM 556 for allotments for this purpose.) The disbursing officer shall forward such allotment of pay to the appropriate agency finance office by memorandum subject: AFIN, Purchase of Service Credit for (name of person to be credited), Foreign Service Retirement and Disability Fund. 3 FAM 671.4-4 Automatic Transfer of Contributions from Another System

If an employee under some other Government retirement system becomes a participant in the Foreign Service Retirement and Disability System by direct transfer, such employee's total contributions and deposits, including interest accrued thereon, except voluntary contributions, are transferred to the Fund as of the date such employee becomes a participant. The transfer of such funds shall constitute a complete discharge and acquittance of all claims and demands against the retirement system on account of services rendered before becoming a participant in the System. No employee whose contributions are so transferred is required to make contributions in addition to those transferred for periods of service for which full contributions were made to the other Government retirement fund, nor is any refund made to any such employee on account of contributions made during any period to the other Government retirement fund at a higher rate than that fixed by section 3 FAM 671.4-3a for contributions to this retirement Fund.

3 FAM 671.5 Creditable Service

3 FAM 671.5-1 General Policy

(TL:PER-33; 5-31-85)

(State Only)

Except as otherwise specified by law, all periods of civilian and military and naval service, and all other periods through the date of final separation of a participant from the Service that PER/ER/RET determines would be creditable toward retirement under the Civil Service Retirement and Disability System (as determined under section 8332 of title 5, United States Code), shall be creditable for purposes of Foreign Service Retirement. Conversely, any such service performed after December 31, 1976, that would not be creditable under specified conditions under section 8332 of title 5, United States Code, shall be excluded under the same conditions and not counted under this section. Generally this means that all service in the executive, judicial, and legislative branches of the Federal Government, unless excluded by section 8332, title 5, U.S.C., are creditable for purposes of computing Foreign Service Retirement benefits. Service creditable under section 8332 of title 5 is described in section 3 FAM 675 Appendix A, subchapter S3.

3 FAM 671.5-2 Exclusion Based on Eligibility for Annuity Under Another System

(TL:PER-33; 5-31-85)
(State Only)

No participant may obtain prior civilian service credit on the basis of which the participant is receiving or will in the future be entitled to receive any annuity under another retirement system covering civilian personnel of the Government or personnel of a public international organization. Participants may waive the other Government annuity and transfer the credit to this System if they wish such credit.

3 FAM 671.5-3 Option to Suspend or Waive Retired Military Pay

(TL:PER-33; 5-31-85)
(State Only)

a. Credit for prior military service which forms the basis for military retired pay, except for certain types of retired pay, described in Federal Personnel Manual Supplement S3-5 (3 FAM 675, Appendix A), or a Veterans pension or compensation in lieu of retired pay, may not be credited toward eligibility for annuity nor computation of annuity under this chapter unless the military retired pay is waived. However, if a military retiree waives military retired pay and the military service is not needed to establish eligibility for an annuity, but is used only in computing the annuity, the military retiree may revoke the waiver upon reaching age 62, have the annuity reduced under section 3 FAM 671.5-4 and have the retired pay reinstated.

b. A participant who is in receipt of retired pay which bars credit for military service may elect to waive the right to future military retired pay and to have military service added to civilian service for the purpose of obtaining a greater benefit in the form of annuity under the System. The participant's waiver request, specifying the effective date of the waiver and social security number, should be forwarded directly to the Military Finance Center from which retired pay is received at least 60 days before the commencing date of annuity under the Act. The waiver should be worded in the following manner:

"I, (full name and military serial number), hereby waive my military retired pay, effective (date of retirement). I hereby authorize the Department of State to withhold from my Foreign Service retirement annuity any amount of military retired pay granted beyond the effective date of this waiver due to any delay in receiving or processing this election. I request that a copy of your acknowledgement be sent directly to:

Department of State Retirement Division Room 1251, Main State Building
Washington, D.C. 20520"

The retiring participant should attach to the application for retirement a copy of the letter to the Military Finance Center.

c. If the participant dies and received military retired pay under conditions whereby such participant could not have used the military service had the participant retired on the date of death, the military service cannot be used in determining the amount of the survivor annuity. A survivor annuitant cannot waive the military retired pay the participant was receiving on the date of death.

3 FAM 671.5-4 Exclusion Based on Eligibility for Social Security

(TL:PER-33; 5-31-85)

(State Only)

Any participant, annuitant, or survivor becoming eligible, or upon proper application would be eligible, for a monthly old-age or survivor benefit under title II of the Social Security Act, based on Peace Corps, Vista, or military or naval service performed after December 31, 1976, will be ineligible to count this service as creditable service under this section. If this service is included in an initial computation, when the annuitant attains eligibility for the social security benefit, the annuity will be recomputed and this service excluded from the computation effective on the first of the month the annuitant becomes entitled to the social security benefit.

3 FAM 671.5-5 Periods of Absence

(TL:PER-33; 5-31-85)

(State Only)

Credit is granted for all leave without pay, and for time on the rolls in a nonpay status; for example, leave without pay, suspension, furlough, and absence without leave which does not exceed 6 months in the aggregate in any calendar year (except when the entire period is creditable as provided in section 3 FAM 671.5-6, 3 FAM 671.5-8, and 3 FAM 671.5-16).

3 FAM 671.5-6 Employee Organization

(TL:PER-33; 5-31-85)
(State Only)

a. Effective November 7, 1976, a participant who takes leave without pay (LWOP) to serve full-time in an employee organization composed primarily of Government employees will be required to pay into the Fund both the employee and employer retirement contribution (14 percent of basic salary) for all such service to obtain retirement credit or to make no deposit and forego all retirement credit for LWOP.

b. A participant may make a special contribution for any period of approved LWOP prior to November 7, 1976, while serving full-time in such an employee organization to obtain full retirement credit for such period of LWOP. If such contribution is not made, up to 6 months' credit shall be allowed for such LWOP each calendar year. Any such special contribution shall be based upon the suspended Foreign Service salary rate and shall be computed under section 3 FAM 671.4-3.

3 FAM 671.5-7 Japanese-American Employee Service

(TL:PER-33; 5-31-85)
(State Only)

Full credit is allowed, without deposit, to certain Japanese-American employees while citizens of the United States or aliens lawfully admitted to the United States for periods of confinement in internment camps during World War II. Retirement credit is allowed only for that portion of the period of internment or detention occurring after the employee attained 18 years of age and for which credit has not already been allowed under Public Law 86-782, which granted special Civil Service pay and retirement benefits to those individuals of Japanese ancestry who had been interned and who were employed by the Federal Government as of July 15, 1952. For purposes of obtaining credit under this section, "World War II" means the period beginning December 7, 1941, and ending December 13, 1946.

3 FAM 671.5-8 Employees' Compensation

(TL:PER-33; 5-31-85)
(State Only)

If a participant is receiving employee-compensation benefits under 5 U.S.C. 8101-8150, credit is given for the entire period if the participant is carried on the rolls of a Government agency in a leave without pay status. Also, full credit is allowed for all or the portion of the period of separation during which a former participant receives employee's compensation, provided the participant is later reemployed.

3 FAM 671.5-9 Breaks in Service

(TL:PER-33; 5-31-85)
(State Only)

Separations of only 1, 2, or 3 calendar days are not deducted in computing total creditable service. No credit is allowed, however, for any period of separation which totals more than 3 calendar days.

3 FAM 671.5-10 Periods for Which Refunds Have Been Made

(TL:PER-33; 5-31-85)
(State Only)

Creditable service for which retirement deductions have been refunded to a participant is included if a special contribution is made to the Fund. If special contribution is not made, this service is not included in length of service for annuity computation, but is included for all other purposes.

3 FAM 671.5-11 Service for Which Retirement Deductions Have Not Been Made

(TL:PER-33; 5-31-85)
(State Only)

Even though retirement deductions were not made for a period of Government civilian service, credit generally may be given without special contribution to cover this service. If a special contribution is not made, however, the annuity is subject to reduction as explained in section 3 FAM 673.3.

3 FAM 671.5-12 Terminal Leave

(TL:PER-33; 5-31-85)
(State Only)

A lump-sum payment covering accrued accumulated and restored annual leave is not considered pay for retirement purposes, and no credit is allowed for the period covered by the payment.

3 FAM 671.5-13 Fractional Part of a Month in Total Service

(TL:PER-33; 5-31-85)
(State Only)

In computing a participant's total creditable service, the fractional part of a month in the aggregated service is eliminated. For example, a participant who has two periods of creditable service, one of 2 years, 6 months, and 20 days duration and the other 18 years, 3 months, and 15 days duration, is given credit for a total of 20 years and 10 months of service.

3 FAM 671.5-14 Service at Unhealthful Posts

(TL:PER-33; 5-31-85)
(State Only)

a. The Allowances Staff (A/ALS) may from time to time establish a list of places which, by reason of climatic or other extreme conditions, are to be classified as unhealthful (see 3 FAM 671, Exhibit 671.5-14a). A/ALS may at any time cancel the designation of any post on the unhealthful list, and such cancellation does not affect any credit accrued for service at such post before the cancellation date.

b. Chiefs of mission of Class I posts who are also participants in the Foreign Service Retirement and Disability System automatically receive extra service credit toward retirement for service at unhealthful posts. Other participants in the System who are assigned to unhealthful posts automatically receive post differential pay, if such is prescribed for the post, or they may elect to receive extra service credit toward retirement in lieu of post differential pay on Form OF-140, Election to Receive Extra Service Credit Towards Retirement (3 FAM 671 Exhibit 671.5-14b). Any such election filed on or after November 22, 1978, is irrevocable for the duration of the participant's assignment at the post. Except that whenever there is a change by the Department in benefits such as the removal of the pay cap or an increase or decrease in a post differential, a participant whose benefits are changed may revoke the election within 60 days of the benefit change. For this purpose, an assignment would be terminated by travel to the U.S. for home leave and return. Returning to the same post would constitute a new assignment thereby permitting a new election if desired.

c. Extra service credit is granted in an amount equal to one-half the time spent at an unhealthful post exclusive of time absent from the post on temporary duty, consultation, or detail at other locations not designated as unhealthful. In computing the extra service credit, count the total amount of time spent at an unhealthful post from the date of arrival, or from the date the election to receive extra credit becomes effective, through the date of final departure, including leaves of absence spent at the post or elsewhere and excluding temporary duty, detail, or consultation at a post not on the unhealthful list. Any fraction of a month appearing in the final total is counted as an entire month. This result is then divided by two and the answer represents the extra credit to which the participant is entitled. For example:

Post	Years	Months	Days
Addis Ababa	2	5	6
Bangkok	1	3	2
Bombay	0	6	1
Total	4	2	9
Count fractional month as whole month and divide by 2	4	3	0
Extra service credit allowed	2	1	15

d. A participant in the System may receive extra credit for service performed at an unhealthful post before becoming a participant, if (1) service was performed in an American Foreign Service personnel category or under a General Schedule appointment with a Foreign Affairs Agency, (2) the participant has made full contributions to the Fund for such period of service or a deduction made under section 3 FAM 673.3-1b, and (3) the person was ineligible to receive a salary differential while assigned to such post.

e. Extra credit for service at an unhealthful post is counted for the purpose of meeting the minimum length of service required for retirement eligibility, eligibility for survivor annuity under section 3 FAM 673.5 (but see restriction in section 3 FAM 671.7-3a applicable to former spouses), and eligibility to continue health and life insurance coverages into retirement, if all other requirements have been met. However, the extra credit for service at an unhealthful post cannot be added in computing the employee's "high-3" average salary.

3 FAM 671.5-15 Credit for Unused Sick Leave

(TL:PER-33; 5-31-85)
(State Only)

The service of an employee who (1) retires on immediate annuity or (2) dies leaving a survivor entitled to survivor annuity is increased by the days of unused sick leave to the employee's credit. The days of unused sick leave thus added are used only in counting the number of years and months of service for annuity computation purposes; they cannot be added in computing the employee's high-3 average salary or for the purpose of meeting the minimum length of service required for retirement eligibility. However, unused sick leave may be credited without regard to the 35-year limitation mentioned in section 3 FAM 673.3-1. An immediate annuity is one which begins to accrue no later than 1 month after the employee is separated. A separated employee entitled to a deferred annuity beginning at age 60 is not entitled to retirement credit for unused sick leave if that individual attains age 60 more than 1 month after separation.

3 FAM 671.5-16 Credit While on Approved LWOP to Serve as an Employee of Congress

(TL:PER-33; 5-31-85)
(State Only)

A participant who, while on approved leave without pay, serves as a full-time paid employee of a Member or office of the Congress, shall continue to make contributions to the Fund based upon the Foreign Service Salary rate that would be in effect if the participant were in a pay status. The participant's employing office in the Congress shall make a matching contribution to the credit of the Fund. All periods of service for which full contributions to the Fund are made under this section are considered creditable service for all purposes and shall not, unless all retirement credit is transferred, be counted as creditable service under any other Government retirement system.

3 FAM 671.5-17 Special Rules for Computing Creditable Service for Purposes of Payments to Former Spouses

(TL:PER-33; 5-31-85)
(State Only)

For the purpose of determining the pro rata share of annuity, survivor annuity, or lump-sum payable to a former spouse, and only for this purpose, the following shall be considered creditable service:

a. The entire period of a principal's approved leave without pay during full-time service with an organization composed primarily of Government employees irrespective of whether the principal elects to make payments to the Fund for this service as described in section 3 FAM 671.5-6;

b. The entire period of Government service for which a principal received a refund of retirement contributions which the principal has not repaid unless the former spouse received under section 3 FAM 673.8 a portion of the (lump-sum) refund or unless a spousal agreement or court order provided that no portion of the refund be paid to the former spouse; and

c. All creditable service including service in excess of 35 years notwithstanding the limitation in section 3 FAM 673.3-1.

Extra credit earned for service at an unhealthful post is counted for this purpose provided the former spouse resided at the post. See section 3 FAM 671.7-3.

The period covered by the credit for unused sick leave under section 3 FAM 671.5-15 is not creditable for this purpose.

3 FAM 671.6 Sources of Moneys

(TL:PER-33; 5-31-85)
(State Only)

The Fund is maintained by:

a. Deductions equal to seven percent of basic salary received by each participant and matching contributions from the employing agencies;

b. Special contributions from participants and transfers of contributions from other retirement systems under sections 3 FAM 671.4 and 3 FAM 673.3-1c;

c. Appropriations to the Fund authorized by section 821 of the Act to amortize certain unfunded liabilities of the System and to meet the portion of the Foreign Service normal cost not met by contributions under paragraphs a and b;

d. Payments into the Fund from the Treasury pursuant to section 822 of the Act equivalent to interest on the unfunded liability of the System and to defray the cost of free credit for military and naval service; and

e. Earnings of Fund investments under section 819 of the Act.

The Office of Budget and Planning (M/COMP/BP) with the advice of the Actuary in the Office of the Secretary of the Treasury determines the amount of appropriations and payments under paragraphs c and d.

3 FAM 671.7 Required Notifications to Department Respecting Spouses and Former Spouses

3 FAM 671.7-1 Notification from Participant or Annuitant

(TL:PER-33; 5-31-85)
(State Only)

If a participant or former participant becomes divorced on or after February 15, 1981, the participant shall notify the Department (PER/ER/RET) of the divorce on or prior to its effective date. The notice shall include the effective date of the divorce; the full name, mailing address, and date of birth of the former spouse; the date of the member's marriage to that person; and an enclosed certified copy of the divorce decree. If there is a court order or spousal agreement concerning payment or nonpayment of Foreign Service benefits to the former spouse, the original or a certified copy of the order or agreement shall also be forwarded to PER/ER/RET. In the absence of a court order or spousal agreement providing otherwise, the Department will pay a pro rata share of the member's benefits to the former spouse as described in section 3 FAM 673.2-1. (A former spouse of a former participant who separated from the Service on or before February 15, 1981, is not eligible for a pension under section 3 FAM 673.2, that is, not eligible for a pro rata share of the principal's annuity.) Upon receipt of notice of a divorce, a court order, or spousal agreement, the Department will proceed as indicated in section 3 FAM 671.8 or 3 FAM 671.9. Delinquent notice to the Department of the divorce of an annuitant will result in retroactive payments to any qualified former spouse to the extent that the retroactive payments can be deducted from future annuity payments to the principal as stated in section 3 FAM 671.8-4.

3 FAM 671.7-2 Notification to Department From Former Spouse

(TL:PER-33; 5-31-85)
(State Only)

A former spouse is obligated to notify the Department on a timely basis of the following:

- a. A divorce from a participant or former participant when the former spouse is notified by the court of the divorce before the participant is notified;
- b. Any change in address; and
- c. Any remarriage.

Notices shall be sent to the Department of State, Attention PER/ER/ RET, Washington, D.C. 20520.

3 FAM 671.7-3 Residence of Spouse During Service at Unhealthful Post

(TL:PER-33; 5-31-85)
(State Only)

a. The calculation of the pro rata share of benefits for a former spouse, and the determination of whether a person qualifies as a "former spouse" depends on the length of the marriage. The latter, under the definition in the Act and when the principal has received extra service credit for an assignment to an unhealthful post, depends upon whether a spouse has resided with the principal at the unhealthful post. In order to determine residency for this purpose, whenever a married participant is assigned to an unhealthful post for which the participant does not receive post differential and does receive or request extra service credit pursuant to section 3 FAM 671.5-14, the participant shall report on Form OF-140, Election to Receive Extra Service Credit Towards Retirement, whether the participant's spouse is or is not residing at the post. Although a chief of mission is not required to submit Form OF-140 in order to receive extra credit for service at an unhealthful post, the chief of mission must nevertheless submit this form if the chief of mission has a spouse, to record the residence of own spouse. Both the participant and spouse shall sign the completed form. If there is a change in residence of the spouse during the assignment, a new Form OF-140 shall be filed to report the change.

b. Whenever a participant retires or becomes divorced, or whenever a former participant becomes divorced who has extra service credit for assignment at an unhealthful post completed prior to the issuance of this regulation and who was married during at least a portion of the assignment, the participant or former participant shall submit a statement to PER/ER/ RET reporting on whether the participant's spouse resided at the unhealthful posts and the dates of such residence. The statement shall be signed by the principal and the principal's spouse or former spouse whenever possible.

c. In the event of a disagreement between a principal and principal's spouse or former spouse concerning residency at an unhealthful post, or the submission of a report or statement by a principal showing a period of nonresidence at a post by a spouse which is not signed by the spouse, the determination of residence will be made by PER/ER/RET based on records in the Department of payments for travel and allowances plus any other evidence that can be adduced. In the absence of any evidence to the contrary, the assumption will be made that the spouse resided at the post.

3 FAM 671.8 Court Orders and Divorce Decrees

3 FAM 671.8-1 Orders by a Court

(TL:PER-33; 5-31-85)

(State Only)

a. A court may (1) Fix the amount of any pension to a former spouse under section 3 FAM 673.2, or order that none be paid;

(2) Fix the amount of any regular survivor annuity to a former spouse under paragraphs a and b of section 3 FAM 673.5-2, or order that none be paid;

(3) Order provision of an additional survivor annuity for a spouse or former spouse under section 3 FAM 673.4-5;

(4) Fix the amount of any benefit under section 3 FAM 673.4-7 based on recall service payable to a former spouse to whom the annuitant was married during any portion of the recall service, or order that none be paid;

(5) Fix the amount of any lump-sum payable to a former spouse under section 3 FAM 673.8, or order that none be paid;

(6) Order, to the extent consistent with any obligation stated in section 3 FAM 673.1-2 between a participant and a former spouse, and under any court decree of divorce, legal separation, or annulment or any court ordered or approved property settlement agreement incident to any court decree of divorce, legal separation, or annulment, that any payment from the Fund which would otherwise be made to a former participant based on that participant's service shall be paid (in whole or in part) by the Secretary of State to a spouse or previous spouse or child of such participant. No apportionment under this paragraph may be made of a payment authorized to be paid to a survivor of a participant or annuitant.

b. An order by a court that does not meet the definition of "court" in section 3 FAM 671.2(7) is not valid for purposes of this section even though a divorce decree issued by such court may be a basis for pro rata share payments to a former spouse as described in these regulations.

3 FAM 671.8-2 Qualifying Court Order

(TL:PER-33; 5-31-85)
(State Only)

a. To be valid for purposes of this section, a court order must be found to be "qualified" by PER/ER/RET acting for the Secretary of State. A qualifying court order must

(1) Be consistent with the terms of the Act and applicable regulations;

(2) Not direct payment of an amount in excess of the maximum amount authorized to be paid by the relevant regulation;

(3) Direct that payments be made to an eligible beneficiary from a principal's Foreign Service retirement benefit or survivor benefit. If a court directs or implies that a principal, rather than the Secretary of State or the Government, make the payments, the order will not be considered qualified unless the principal does not object during the 30-day notice period provided under section 3 FAM 671.8-6;

(4) Define the amount to be paid to a beneficiary in a way so that it can be readily calculated from information in the normal files of the Department;

(5) Not make payment contingent upon events other than those on which other payments from the Fund are based such as age, marital status, and school attendance; and

(6) Not be in conflict with any previously issued court order pertaining to another individual which remains valid.

b. No apportionment of annuity to a beneficiary under section 3 FAM 671.8-1a(1) or (6) shall exceed the net annuity of the principal. The net annuity is computed by excluding from the gross annuity the amounts which are:

(1) Owed by the individual to the United States;

(2) Deducted for health benefits premiums under section 8906 of title 5, United States Code;

(3) Deducted for life insurance premiums under the Government Life Insurance Program;

(4) Owed due to overpayment of annuity;

(5) Properly withheld for Federal income tax purposes, if amounts withheld are not greater than they would be if the individual claimed all dependents to which that individual was entitled.

3 FAM 671.8-3 Application for Payment

(TL:PER-33; 5-31-85)
(State Only)

a. To receive payment from the Fund pursuant to a court award, the beneficiary must submit an application in writing to the Chief of the Retirement Division (PER/ER/RET), Department of State, Washington, D.C. 20520. The application must be typed or printed, signed by the beneficiary, and include:

(1) The full name, date of birth, current address, and current marital status of the beneficiary;

(2) Full name and date of birth of the participant or former participant and/or other identifying information;

(3) Relationship to the beneficiary, and if a spouse or former spouse, date of marriage to and/or divorce from the participant; and

(4) A statement that the court order has not been amended, superseded, or set aside.

The original of the court order or a recently certified copy must be enclosed with the application, or a statement appended that such a copy has been sent to the Department by other means.

b. When payments are subject to termination upon the occurrence of a condition subsequent, such as marriage, remarriage, or termination of schooling, or death of the principal, no payment will be made until the beneficiary submits a statement to PER/ER/RET that:

(1) The condition has not occurred;

(2) The beneficiary will notify the Department (PER/ER/RET) within 15 calendar days of the occurrence of the condition subsequent; and

(3) The beneficiary will be personally liable for any overpayment to self resulting from the occurrence of the condition subsequent. PER/ER/RET may require periodic recertification of these statements.

3 FAM 671.8-4 Date of Court Orders

(TL:PER-33; 5-31-85)
(State Only)

a. A court order directing or barring payment of a pension to a former spouse under section 3 FAM 673.2 may not be given effect by the Department if it is issued more than 12 months after the divorce becomes final. A court order adjusting the amount of a regular or additional survivor annuity to a former spouse under sections 3 FAM 673.5-2 or 3 FAM 673.4-5 may not be given effect by the Department if it is issued after the death of the principal.

b. A court order, issued within 12 months after a divorce becomes final, directing payment of a pension to a former spouse in an amount other than provided in section 3 FAM 673.2 may be made retroactively effective to the first of the month in which the divorce becomes final if so specified by the court. In such event, the Department will adjust any future payments that may become due to an annuitant and a former spouse by increasing one and correspondingly reducing the other to give effect to the order of the court. However, if future payments to one party are not due, as for example if a court orders that no payments be made to a former spouse, or that 100 percent of an annuity be paid as pension to a former spouse, the Department cannot give retroactive effect to a court order by collecting overpayments from one party to pay them to the other party and cannot make overpayments from the Fund.

c. A court order under this chapter involving any payment other than a pension to a former spouse under section 3 FAM 673.2 may not be given retroactive effect and shall not be effective until it is determined to be a qualifying order under section 3 FAM 671.8-5.

3 FAM 671.8-5 Preliminary Review

(TL:PER-33; 5-31-85)

(State Only)

a. Upon receipt of an application for payment under section 3 FAM 671.8-3, PER/ER/RET will determine whether:

- (1) The application is complete;
- (2) The applicant is an eligible beneficiary under this chapter; and
- (3) The court order is a qualifying order.

If the application is complete, the beneficiary is eligible, and the court order appears on its face to be a qualifying order, PER/ER/RET will provide the notification required by section 3 FAM 671.8-6. Otherwise, it will notify the applicant of any deficiency or requirement for additional information, and if the order is determined to be non-qualifying, PER/ER/RET will notify the applicant of the basis for such determination.

b. Upon receipt of a certified copy of final decree of divorce, PER/ER/RET will determine whether (1) It is a valid decree. Any judicial decree recognized as valid by the parties will be considered valid for this purpose. In addition, any non-recognized decree will be considered valid for this purpose unless:

- (a) Neither party was domiciled within the court's jurisdiction; and
 - (b) The party denying recognition did not participate in the proceedings; or
 - (c) The party denying recognition was not afforded notice of the proceedings (actual or constructive);
- (2) A related court order has been submitted by either party; and
 - (3) A pro rata share payment is or may become due the former spouse.

If a divorce decree is deemed valid under this paragraph, a pro rata share payment is due a former spouse unless PER/ER/RET is in receipt of a court order which it has deemed qualified under paragraph a, or a valid spousal agreement providing otherwise. If PER/ER/RET determines that a pro rata share payment is due, it will provide the notification required by section 3 FAM 671.8-6. Otherwise, unless action is being taken pursuant to a related court order, it will notify both parties to the divorce the reason a pro rata share payment is not payable.

3 FAM 671.8-6 Notification

(TL:PER-33; 5-31-85)
(State Only)

a. Notification to a Principal

Whenever PER/ER/RET receives from a former spouse or other eligible beneficiary (1) A court order which it deems qualified that requires payment to the beneficiary; or

(2) A final decree of divorce which it deems valid together with a request for a pro rata share payment, PER/ER/RET will send a copy of the document to the principal and a notice stating:

(a) That PER/ER/RET deems the order qualified or the divorce decree valid;

(b) That payments will be made from the principal's account to the beneficiary and the effective date of such payments; and

(c) The effect of such payments on the principal's retirement benefit.

In the case of any court order with retroactive or immediate effect, and in the case of pro rata share payments, the amounts will be withheld from future payments to the principal but will not be paid to the beneficiary for 30 days from the notice date in order to give the principal an opportunity to contest the court order or the validity of the divorce.

PER/ER/RET will provide the former spouse or other beneficiary the same information, stating the exact amount that will be payable to the beneficiary and explaining how that amount was calculated.

b. Notification to a Former Spouse

When PER/ER/RET receives from a principal a court order which it deems qualified that requires or forbids payment to a former spouse or a final decree of divorce which it deems valid without an accompanying court order, PER/ER/RET will send a copy of the document to the former spouse and notice stating:

(1) That PER/ER/RET deems the court order qualified or the divorce decree valid;

(2) That PER/ER/RET intends to honor the court decree or to make pro rata share payments because of the divorce; and

(3) The effective date, exact amount, and method of calculation of any payments to the former spouse.

PER/ER/RET will provide the same information to the principal and will explain the effect any payment to a former spouse will have on the principal's retirement benefit.

3 FAM 671.8-7 Decision

(TL:PER-33; 5-31-85)
(State Only)

a. When a response has not been received by PER/ER/RET from a principal within the 30-day period under section 3 FAM 671.8-6a, payment will be made in accordance with the notification. When a response is received, the Chief, PER/ER/RET will consider the response. If it is shown that a court order is not qualifying or that a divorce is not valid under terms of the Act and these regulations, payment proposed in the notification will not be made. In such a case, PER/ER/RET will advise both parties of the basis for its decision and the alternative action, if any, that it proposes to take.

b. If a principal responding to a notification under section 3 FAM 671.8-6a objects to the payment or other action proposed by the Department in the notification based on the validity of the court order or divorce decree, and the record contains support for the objection, PER/ER/RET will grant the principal 30 days to initiate formal legal action to determine the validity of the objection, will continue to delay payment to the former spouse or other beneficiary during this period, and will notify the beneficiary of this action. If evidence is submitted that formal legal action has been started within the 30-day period, the amount of any proposed payment to a former spouse or other beneficiary will continue to be withheld from any payments due the principal, but no payment will be made to the former spouse or other beneficiary until a judicial decision is rendered or agreement reached between the parties.

3 FAM 671.8-8 Allotment to Beneficiary

(TL:PER-33; 5-31-85)
(State Only)

If a court order is not a qualifying court order because it directs or implies that payment to the beneficiary is to be made by the principal rather than the Secretary of State, the principal may make an allotment to the beneficiary from the principal's own annuity. An annuitant may also make an allotment from own annuity to a previous spouse in the absence of a court order.

3 FAM 671.8-9 Limitations

(TL:PER-33; 5-31-85)
(State Only)

a. Retirement benefits are subject to apportionment by court order under section 3 FAM 671.8-1(6) only while the principal is living. Payment of apportioned amounts will be made only to a previous spouse and/or the children of the principal. Such payments will not be made to any of the following:

- (1) Heirs or legatees of the previous spouse;
- (2) Creditors of either the principal or the previous spouse; or
- (3) Assignees of either the principal or the previous spouse.

b. The amount of any court ordered payment may not be less than one dollar and, in the absence of compelling circumstances, shall be in whole dollars.

c. In honoring and complying with a court order, the Department shall not be required to disrupt the scheduled method of accruing retirement benefits or the normal timing for making such payments, despite the existence of any special schedule relating to a previous spouse or other beneficiary.

d. In cases where the court order apportions a percentage of the retirement benefits, PER/ER/RET will initially determine the amount of proper payment. That amount will only be increased, by future cost-of-living increases unless the court directs otherwise.

3 FAM 671.8-10 Liability

(TL:PER-33; 5-31-85)
(State Only)

a. The Department shall not be liable for any payment made from retirement benefits pursuant to a court order if such payment is made under the provisions of this chapter.

b. In the event that the Secretary is served with court orders concerning more than one beneficiary for the same retirement benefits, the benefits shall be available to satisfy the court orders on a first-come, first-served basis.

c. A previous spouse or other beneficiary may request that an amount be withheld from the retirement benefits of a principal or survivor of a principal which is less than the amount stipulated in a court order, or otherwise scheduled to be paid to the beneficiary under this chapter. This lower amount will be deemed a complete fulfillment of the obligation of the Department for the period in which the request is in effect. See section 3 FAM 672.7.

3 FAM 671.9 Spousal Agreements

3 FAM 671.9-1 Purpose

(TL:PER-33; 5-31-85)
(State Only)

A spousal agreement may be used by both parties to establish an agreed-upon level of benefits to a spouse or a former spouse and to relieve the participant of responsibility for providing a higher level of benefits.

3 FAM 671.9-2 Agreement With Spouse

(TL:PER-33; 5-31-85)
(State Only)

a. A spousal agreement between a participant and a spouse may waive or fix the level of a regular survivor annuity under section 3 FAM 673.5-3. If an agreement is filed, it will assure the spouse that the agreed level of survivor annuity will be paid, irrespective of a future divorce provided the survivor meets the definition of "former spouse" in section 3 FAM 671.2(l) unless the court in the divorce orders otherwise. If an agreement is not filed, the participant's annuity will be reduced under section 3 FAM 673.4-2 to provide the maximum regular survivor annuity for the spouse, but in the event of a future divorce if the spouse meets the definition of "former spouse," that person will be entitled only to a pro rata share of the survivor annuity. An agreement under this paragraph may be filed with PER/ER/RET at any time prior to retirement (commencement of the principal's annuity). (See section 3 FAM 673.5-2b.)

b. A spousal agreement between an annuitant and a spouse filed with PER/ER/RET before commencement of a supplemental annuity for recall service may waive a supplemental survivor annuity that would otherwise be provided for a spouse under section 3 FAM 673.4-7.

c. A spousal agreement between a participant or former participant and a spouse may be filed with PER/ER/RET at any time under section 3 FAM 673.4-5 and provide for an additional survivor annuity for the spouse.

d. A spousal agreement filed under paragraph a, b, or c remains valid and binding in the event of divorce if the spouse qualifies as a former spouse unless the court in the divorce orders otherwise.

3 FAM 671.9-3 Agreement With Former Spouse

(TL:PER-33; 5-31-85)
(State Only)

a. A spousal agreement between a participant or former participant and a former spouse may waive, reduce, or increase the following benefits for a former spouse:

- (1) A pension under section 3 FAM 673.2;
- (2) A regular survivor annuity under section 3 FAM 673.5-2;
- (3) A supplemental survivor annuity under section 3 FAM 673.4-7a(5);
- (4) A lump-sum payment for regular or recall service under section 3 FAM 673.8.

A spousal agreement shall also be used by a participant or former participant who has a former spouse on February 15, 1981, wishing to elect a regular survivor annuity for such former spouse under section 3 FAM 673.5-2e. An agreement to establish or increase any benefit for a former spouse entered in to while the principal is married to someone else, must be signed and agreed by both the spouse and the former spouse. An agreement affecting pension benefits may be filed at any time and will govern payments made after its acceptance by PER/ER/RET. An agreement affecting a regular survivor annuity must be filed before the end of the 12-month period after the divorce involving that former spouse or at the time of retirement, whichever occurs first, except as authorized in section 3 FAM 673.5-2b for persons retired on February 15, 1981, or in section 3 FAM 673.5-2e for persons who were former spouses on February 15, 1981. This filing requirement stated in the Act makes it impossible to adjust, other than by court order, a regular survivor annuity for a former spouse when the divorce occurs after a retirement which occurs on or after February 15, 1981. The survivor annuity for the former spouse in such case is fixed by any spousal agreement entered into before the divorce, by section 3 FAM 673.5-2 or by court order. An agreement affecting supplemental survivor benefits or lump-sum payments must be filed before the supplemental annuity of the principal begins or lump-sum payment is made.

b. A spousal agreement between a participant or former participant and a former spouse may be filed with PER/ER/RET at any time under section 3 FAM 673.4-5 to provide an additional survivor annuity for the former spouse.

3 FAM 671.9-4 Form of Agreement

(TL:PER-33; 5-31-85)
(State Only)

a. A spousal agreement is any legal agreement between the parties accepted by PER/ER/RET as meeting the requirements of this section. If the agreement is in accordance with the regulations, PER/ER/RET will accept as a valid spousal agreement a property settlement agreed to by the parties and approved by a court regardless of the date of the agreement.

b. A spousal agreement must either be authenticated by a court or notarized.

3 FAM 671.9-5 Limitations

(TL:PER-33; 5-31-85)
(State Only)

a. A spousal agreement may not provide for any payment from the Fund in excess of the amount otherwise authorized to be paid, or at a time not authorized by these regulations, or to a person other than a spouse or former spouse.

b. A spousal agreement must be filed with the Department, Attention PER/ER/RET, and accepted by that office as in conformance with the Act and these regulations before the times specified in section 3 FAM 671.9-2 and 3 FAM 671.9-3. That office will provide advice to the parties on the validity of any proposed agreement and on proper format.

c. A spousal agreement may apply only to payments from the Fund for periods after receipt of a valid agreement by the Department.

d. Parts b, c, and d of section 3 FAM 671.8-9 and section 3 FAM 671.8-10 apply to spousal agreements and payments made pursuant to spousal agreements to the same extent that they apply to court orders and court ordered payments.

3 FAM 671.9-6 Duration and Precedence of Spousal Agreements

(TL:PER-33; 5-31-85)
(State Only)

a. A spousal agreement may be revised or voided by agreement of the parties (by filing a new agreement under this section) at any time prior to the last day for filing an agreement determined under section 3 FAM 671.9-2 or 3 FAM 671.9-3, except spousal agreements for additional survivor annuities are irrevocable. After the last day for filing a particular agreement, such agreement is irrevocable.

b. A valid spousal agreement entered into subsequent to the issuance of a court order affecting the same parties will override the court order, and shall govern payments from the Fund.

c. A spousal agreement may not override a previous spousal agreement involving the same principal but a different spouse or former spouse without agreement of such spouse or former spouse.

3 FAM 671.10 Annual Notification of Rights

(TL:PER-33; 5-31-85)
(State Only)

The Chief of PER/ER/RET shall, at least annually, take all reasonable steps to notify all participants and former participants, and spouses and former spouses of participants and former participants of their rights and obligations under the Act and these regulations as required by section 806(k) of the Act.

3 FAM 672 SEPARATION OF RETIREMENT UNDER FOREIGN SERVICE RETIREMENT AND DISABILITY SYSTEM

3 FAM 672.1 Voluntary Retirement

3 FAM 672.1-1 Eligibility

(TL:PER-33; 5-31-85)
(State Only)

a. Any participant who is at least 50 years of age and has 20 years of creditable service including at least 5 years of service credit toward retirement under the System (excluding military and naval service) may be retired on application and with the consent of the participant's agency from the Service with entitlement to an immediate annuity computed under section 3 FAM 673.

b. Any participant wishing to retire under these provisions should request the approval of the personnel office of the participant's agency approximately 3 months before the anticipated date of separation. Form OF-126, Residence and Dependency Report (formerly JF-20) (see section 124.3), showing the employee's separation address should be attached to Form OF-136, Application for Retirement (3 FAM 672 Exhibit 672.3-2a).

3 FAM 672.1-2 Cessation of Authority to Act for Government

(TL:PER-33; 5-31-85)
(State Only)

After the date of separation for retirement, a participant is not authorized to act on behalf of the Government but is entitled only to such salary and allowance payments as may be due for service on and before the date of separation.

3 FAM 672.1-3 Date of Separation for Voluntary Retirement

(TL:PER-33; 5-31-85)
(State Only)

a. The separation date of a participant other than a chief of mission retiring voluntarily shall be the date indicated on Form OF-136, Application for Retirement, and with the consent of the participant's agency. This date shall be after the completion of any authorized consultation and/or allowable transit time. This date may be changed if requested by the participant with the consent of the agency before the effective date.

b. In the case of a participant retiring voluntarily while chief of mission, the date of separation shall be the date indicated on Form OF-136, Application for Retirement and with the consent of the participant's agency, which would include authorized consultation, and/or allowable transit, provided this date does not extend beyond 50 calendar days from the date of relinquishment of duties.

3 FAM 672.2 Mandatory Retirement

(TL:PER-33; 5-31-85)
(State Only)

Regulations governing mandatory retirement (1) for age, (2) for completion of maximum time in class, (3) based on relative performance, and (4) of former Presidential appointees who are not reassigned, are contained in section 3 FAM 730.

3 FAM 672.3 Disability Retirement

3 FAM 672.3-1 General Policy

(TL:PER-33; 5-31-85)

(State Only)

a. Eligibility Requirements

A participant shall be retired for disability under section 808 of the Act when:

(1) The participant becomes totally disabled or incapacitated for useful and efficient service by reason of disease, illness, or injury not due to vicious habits, intemperance, or willful conduct on the participant's part; and

(2) The participant has at least 5 years of service credit toward retirement under the System (excluding credit for military and naval service).

b. Who May File Application

(1) An application may be filed either by the participant or by the personnel office of the employing agency in accordance with section 3 FAM 672.3-2. If the participant has been adjudged incompetent, a guardian may apply in the participant's behalf.

(2) Such application must be filed either before the participant is separated from the Service or within 1 year thereafter unless PER/ER/RET waives this requirement in accordance with section 808(f) of the Act.

c. Minimum Disability Annuity Computation

The annuity of a participant retired for disability is computed under section 3 FAM 673.3 but if the participant has less than 20 years of service credit, the annuity is computed on the assumption that the participant has 20 years of service. The additional service credit that may accrue under this provision in no case may exceed the difference between the participant's age at the time of retirement and 65. However, if a participant retiring under this section is receiving retired pay or retainer pay for military service (except that specified in section 8332(c)(1) or (2) of title 5 of the U.S. Code) or pension or compensation from the Veterans Administration in lieu of such retired or retainer pay, the annuity of that former participant shall be computed without the extra service credit authorized by this paragraph and excluding credit for military service from that computation. If the amount of the annuity so computed, plus the retired or retainer pay which is received, or which would be received but for the application of the limitation in section 5532 of title 5 of the U.S. Code, or the pension or compensation from the Veterans Administration in lieu of such retired or retainer pay, is less than the annuity that would be

payable under this paragraph in the absence of the previous sentence, an amount equal to the difference shall be added to the annuity computed under this paragraph.

d. Election Between Foreign Service Retirement Annuity and Worker's Compensation

As a general rule, a participant who is disabled or injured in the line of duty may not receive both an annuity under the Act and compensation for work injuries under 5 U.S.C. 8101-8150 for the same period of time. A participant may apply for whichever benefit is more advantageous.

Even though electing to receive compensation, the participant may also apply for retirement upon separation, but annuity payments are suspended during the period the participant is receiving compensation. By so applying, the participant will protect annuity rights along with any survivor, rights under the Act should workers' compensation be discontinued. If the participant does not wish to apply for retirement, eligibility to obtain a refund under section 3 FAM 673.8 is established. However, if the participant applies for and receives a refund the participant and survivor(s) will lose the right to the annuity. The general bar against receipt of annuity and compensation at the same time is subject to the following exceptions:

(1) An employee receiving compensation benefits as a consequence of the death of another person may also receive annuity under the Act on the basis of creditable service.

(2) The right of any person entitled to an annuity under the Act is not affected because that person has received:

(a) A scheduled disability award under 5 U.S.C. 8107 for the loss of a bodily member; or

(b) A lump-sum commuted payment under 5 U.S.C. 8135 of a monthly compensation award for work injuries.

However, if a Foreign Service annuity is payable on account of the same disability for which monthly compensation was awarded in order to qualify for the annuity, the annuitant must refund to the Office of Workers' Compensation Programs, Department of Labor, that portion of the commuted payment determined by the Secretary of Labor to cover any period extending beyond the effective date of the annuity.

3 FAM 672.3-2 Initiation of Disability Retirement

(TL:PER-33; 5-31-85)

(State Only)

Disability retirement may be initiated by the participant or by the employing agency.

a. By the Participant

(1) Any participant meeting the eligibility requirements set forth in section 3 FAM 672.3-1a may submit Form OF-136 (formerly JF-32), Application for Retirement (3 FAM 672, Exhibit 672.3-2a) to the personnel office, of, participant's agency (PER/ER/RET, in, the, Department) requesting, consideration, for disability retirement.

The participant must include in the application a description of the disability and a full explanation of the manner in which it affects performance of duties. The participant may enclose with the application a statement by a private physician describing the claim for disability. Failure to do so, however, shall not adversely affect the consideration of the application.

The participant must inform own immediate supervisor of the application for disability retirement and the date of the application.

(2) The appropriate agency personnel office will;

(a) Promptly obtain, whenever possible, a Superior Officer's Statement (Form JF-32a) as explained in section 3 FAM 672.3-2b and attach the statement to the application;

(b) Consult with the Office of Medical Services (M/MED) and schedule any medical examination requested by M/MED or the participant; and

(c) Send the application and the Superior Officer's Statement (Form JF 32-a) to PER/ER/RET.

(3) PER/ER/RET will control the application and forward it to M/MED for action under section 3 FAM 672.3-3.

b. By the Agencies

A recommendation for the disability retirement of any participant may be initiated by the main personnel office of any employing agency (PER/FCA or PER/CCA in the Department). Such office shall observe the following procedures when filing an application to retire a participant for disability when the participant does not make application:

(1) **Determinations.** The appropriate personnel office determines whether a reasonable assumption exists that the participant is totally disabled or incapacitated for useful and efficient service. Determination is made on the basis of supervisory observation, job performance, attendance records, knowledge of illness, accident, hospitalization, or upon other documented evidence. That office determines whether the participant meets the minimum requirement established in section 3 FAM 672.3-1a(2).

(2) **Superior Officer's Statement.** The appropriate personnel office shall, when possible, request the immediate superior, officer, of, any participant, being, considered for disability, retirement, to, prepare, a written, statement, describing in detail the nature, of, the, applicant's apparent, disability, and explaining the manner, if, any, in, which, it affects, the, performance, of official duties. (Form, JF-32a, Superior Officer's Statement in Connection with Disability Retirement, may be used for this purpose. See 3FAM 672, Exhibit 672.3-2b).

(3) **Counseling.** If it appears that the participant is eligible, for disability, retirement, the appropriate agency officer will, counsel, the individual regarding, retirement, possibilities, and, procedures. If eligible to apply on own behalf and the participant so elects, action, is effected under section 3 FAM 672.3-2a.

If, retirement, is, not, voluntary and, the, agency, elects, to, initiate disability, retirement action, the participant is counseled, as, to, the right, to, designate a representative to advise and assist in, connection with the proposed action.

When, the, participant does not designate a representative, and, it, is considered in the participant's interest to do so, the appropriate agency may designate such a representative.

(4) **Responsibility of a Representative.** The designated representative of, a, participant who is being considered for disability retirement will receive, copies, of, notices, determinations, decisions, or, any, other written, communications, pertinent to, the, action, being, taken, by, the appropriate, agency. Such, representative will, advise, and, assist, or represent, the, participant, on, any matters, relating, to, the, proposed retirement action.

(5) **Fitness-for-Duty, Examination.** When, the, appropriate, agency personnel, office believes that a participant may be totally disabled, or incapacitated, for, useful and efficient service within, the, meaning, of section, 3 FAM 672.3-1, it may, after consultation with the Medical, Director, direct, the, participant, to, report, to, the, Medical, Director, of, the Department, of, State, and, the Foreign Service, for, a, fitness-for-duty examination.

The, participant, and, representative as, may, be, appropriate, must, be notified, in, advance, in writing, and the notice, shall, set, forth, the reasons for, the, medical, examination, and, its, general, scope. The examination, will be conducted under section 3 FAM 672.3-3a. A, copy, of, the letter, and the participant's case file will be forwarded to the, Medical Director.

A, participant, refusing to submit to the examination, is, requested, to decline, in, writing. Despite such refusal, the appropriate, agency, may continue to process the application for retirement on the basis of, other available evidence.

When, the, participant is found medically fit for duty, by, the, Medical Director, procedures under this section will be discontinued.

When the participant is found to be medically unfit for duty on the basis of, a, medical, examination conducted by, or under the direction, of, the Medical, Director, of, the Department of State and Foreign, Service, the personnel office of the participant's agency will be so advised.

(6) Notice of Proposed Agency Application and Participant's, Rights. When, it, is, determined, that an application for, disability, retirement appears, to, be justified and the participant has refused to, apply, the appropriate, agency personnel office shall notify the participant, and/or the representative in writing of:

(a) Its determination;

(b) The reason for this determination;

(c) The participant's right, or the right of a representative or, the designated, physician to review the case file, subject to the limitations specified below;

(d) The, participant's, right, to a medical, examination, under, the provisions of section 3 FAM 672.3-3b; and

(e) The participant's right to answer orally or in writing, or both, and to submit affidavits or documentary evidence, or both, to an official designated to receive the answer.

The, participant's, answer, must be submitted within, 15, calendar, days, unless an extension is granted by the official designated to receive, the answer. An, oral answer must be summarized in writing by, the, official receiving it, and included in the case file.

Limitations: Specific and detailed reasons and findings that are required by, section, 3 FAM 672.3-2 are to be given to a participant, except, when, they relate, to a physical or mental condition about which a prudent physician would, hesitate to inform the participant. In such cases, only, general reasons and findings are given to the participant and any representative, and the person is informed that a full report of the medical evidence, on file, will, be made available in M/MED to a licensed physician designated in writing or representative for that purpose.

(7) Action on Participant's Answer. The appropriate agency personnel office will:

(a) Review, the participant's reply, if any, including any, evidence that, was, submitted, and, the report of medical, opinion, then, make, a determination whether to file the application for disability retirement;

(b) Inform the participant in writing of its determination, and, the findings supporting that determination; and

(c) File an application on behalf of the participant if it determines that a reasonable assumption of disability exists.

3 FAM 672.3-3 Medical Examinations and Reports

(TL:PER-33; 5-31-85)

(State Only)

Medical, examinations, in, connection, with, disability, retirement are conducted by one or more duly qualified physicians, as follows:

a. Examination by the Medical Director

The, examination is conducted by, or under the direction of, the, Medical Director of the Department of State and the Foreign Service.

b. By a Board of Medical Examiners

(1) **When, a Board Will Be Used.** The report of examination performed under, section, 3 FAM 672.3-3a, is, reviewed by a Board, of, Medical, Examiners composed of three qualified physicians when:

(a) The, disability retirement action is initiated, by, one, of, the agencies under section 3 FAM 672.3-2b(6);

(b) A participant initiating a disability retirement action elects to have the report of medical examination reviewed by a board;

(c) A, participant appeals a determination based on, an, examination conducted by, or under the direction of, the Medical Director; or

(d) When, the Director General of the Foreign Service or the, Deputy Assistant Secretary for Personnel determines it to be in the interest, of the Government to do so.

(2) **Designation, of, Boards.** Upon receipt of a proposed, disability action for which a board is required, the Medical Director designates two qualified physicians to be members of the board, one of whom must, be, an expert, or consultant who is not a full-time officer or employee, of, the Federal, Government. The participant may designate a qualified physician as, the third member of the board, or if the participant fails to do, so, the, Director will so designate. Not more than one member of, the, board may be a full-time employee of the Department.

(3) **Operation of Boards.** The members of a board have access to, the entire, case, file, and, all, medical records of, the, participant, being examined. They may conduct, or arrange for, such additional, tests, and examinations as they consider necessary.

c. Medical Report

(1) The, Medical Director, or the Board of Medical Examiners, if, a Board, is used, submits a written report to the Director General, setting forth the results of the examination conducted under section 3 FAM 672.3-3, or the, results of a review of any other medical information concerning, the participation if no such medical examination has been conducted.

(2) The medical report is comprehensive and includes pertinent data on all, disabling, or incapacitating conditions found or alleged, to, exist. The report also contains a statement of opinion on the following points:

(a) Whether the participant is totally disabled or incapacitated, for useful and efficient service.

(b) If the participant is considered to be totally disabled:

(i) Whether, the, disability or incapacity was, caused, by, disease, illness, or, injury, but, not due to vicious habits, intemperance, or willful conduct; and

(ii) Whether the disability or incapacity is permanent.

(3) The, report, is, submitted to the Director General, through, the appropriate personnel office as a part of the case file.

3 FAM 672.3-4 DETERMINATION OF DISABILITY

(TL:PER-33; 5-31-85)

(State Only)

a. Director General's Determination

The entire case file, including comprehensive medical reports and opinions concerning the participant's condition, is reviewed by the Director General or the Deputy Assistant Secretary for Personnel who makes a determination of whether the participant is disabled or incapacitated for purposes of section 808 of the Act.

This constitutes a final determination unless, within 30 days, the participant or participants' designated representative requests reconsideration, under section 3 FAM 672.3-8.

b. Notification to the Participant

The Director General of the Foreign Service or the Deputy Assistant Secretary for Personnel notifies the participant and the appropriate personnel office in writing of the foregoing final determination.

3 FAM 672.3-5 Date of Separation and Commencement of Disability Annuity

(TL:PER-33; 5-31-85)
(State Only)

a. Date of Separation

Upon the approval by the Director General or Deputy Assistant Secretary for Personnel of a disability retirement, the date of separation is established as follows, except that a participant is not continued in a pay status past the end of the month during which the participant reaches mandatory retirement age (see section 3 FAM 730):

(1) If the participant is then on leave without pay, the date of separation is the date approval is granted.

(2) If the participant is then on sick leave, the date of separation is the day sick leave expires, unless the participant elects to apply such sick leave to the participant's service credit. The effective date is then established when the participant ceases sick leave status.

(3) If the participant is still at work on the date of approval, the participant must promptly relinquish official duties. The participant may apply for and may be granted the maximum amount of sick leave to which entitled. (See section 446.2). The effective date of separation in such case is the day the sick leave expires, unless sick leave credit is elected, as stated in subparagraph (2) above.

b. Commencement of Annuity

The annuity in disability retirement cases begins on the day following termination of pay status unless the participant becomes disabled while on leave without pay. In the latter case, the annuity begins on the day after the disability occurs as determined by the Medical Director.

If in the case of disability retirement, the participant is on leave without pay, the annuity is computed through date of approval and becomes payable the date pay ceased or the date the disability occurred, whichever is later.

3 FAM 672.3-6 Annual Review and Evaluation of Disability Status

(TL:PER-33; 5-31-85)
(State Only)

a. General Policy

(1) **Temporary Disability Cases.** Each annuitant whose disability or incapacity is not determined to be permanent, is given an annual medical examination from the date of medical determination until one of the following conditions exists:

- (a) The disability is determined to be permanent;
- (b) The annuitant has reached the statutory mandatory retirement age of 65; or
- (c) The annuitant has recovered.

(2) **Permanent Disability Cases.** Whenever an annuitant's disability is determined to be of a permanent character, the annuitant is not given an examination again unless in the opinion of the Director General of the Foreign Service or Deputy Assistant Secretary for Personnel such action is warranted by unforeseen circumstances or conditions subsequently found to exist.

b. Medical Examinations

When the disability has been determined to be temporary, the Medical Director arranges for the required annual medical examination of an annuitant retired for disability or incapacity before the anniversary of the date on which such medical determination of disability was made. The annual examinations are conducted by, or under the direction of, the Medical Director, or by a Board of Medical Examiners, as provided in sections 3 FAM 672.3-3a and 3 FAM 672.3-3b.

The Medical Director, at any time subsequent to the initial examination on which disability or incapacity was determined, on the basis of additional medical information, may submit a recommendation to the Director General that an annuitant's disability or incapacity is permanent.

c. Medical Report

The Medical Director, or the Board of Medical Examiners, makes a written report setting forth the results of the examination. The report also contains a statement of opinion by the Medical Director, or the Board, on the following points:

(1) Whether the annuitant continues to be totally disabled or incapacitated for useful and efficient service; and

(2) If so, whether the disability or incapacity is permanent.

All reports are submitted by the Medical Director through PER/ER/RET to the Director General.

d. Determination of Disability Status

Upon review of the report of the Medical Director, or of the Board of Medical Examiners, the Director General or Deputy Assistant Secretary for Personnel determines:

(1) Whether the annuitant continues to be totally disabled or incapacitated for useful and efficient service; and

(2) If so, whether the disability or incapacity is permanent.

e. Notice to Annuitant

PER/ER/RET notifies the annuitant in writing of the foregoing determinations.

f. Failure to Submit to Examination

If a disability annuitant fails to submit to the examination or examinations required under section 3 FAM 672.3-6a, payment of the annuity is suspended until such examinations are completed.

3 FAM 672.3-7 Reinstatement or Reappointment of Recovered Foreign Service Annuitants

(TL:PER-33; 5-31-85)
(State Only)

a. Whenever on the basis of a medical examination the Director General or Deputy Assistant Secretary for Personnel determines that an annuitant has recovered to the extent that the annuitant can return to duty and is no longer disabled or incapacitated for useful and efficient service, the annuitant may, within a period of 1 year from the date on which recovery is determined, apply for reinstatement or reappointment in the Service as provided under section 125.4-2, for State; Handbook 25 chapter 6g, for AID; or MOA V-B-1138.2 for USIA; 3FASR81, for FAS; or (to be provided) for FCS.

b. If for any reason a recovered disability annuitant whose annuity is discontinued is not reinstated or reappointed in the Service, the annuitant is considered to have been separated as of the date on which the individual was retired for disability. In such event the individual is, after discontinuance of the disability annuity, entitled to a lump-sum payment under section 3 FAM 673.8. Alternatively, the annuitant may elect to leave own contributions in the Fund and apply for voluntary retirement under section 3 FAM 672.1, if eligible, or a deferred annuity at age 60 under section 3 FAM 672.4.

c. Payment of the annuity continues until 6 months after the date of the examination showing recovery or until the date of reinstatement or reappointment in the Service, whichever is earlier.

3 FAM 672.3-8 Appeals

(TL:PER-33; 5-31-85)
(State Only)

A participant or annuitant who is dissatisfied with one of the determinations made under the provisions of section 3 FAM 672.3-4 or 3 FAM 672.3-6c may request that one's case be reconsidered by submitting an appeal.

a. Submission

The appeal, addressed to the Under Secretary for Management, shall be submitted within a period of 30 days following the date the participant or annuitant received the determination, unless prior to the expiration of the 30 days an extension is granted by the Under Secretary for Management. The appeal should contain a full statement of the reason for seeking reconsideration and any pertinent data the participant or the annuitant may care to submit.

b. Availability of Case File

The case file, containing all available previous considerations by the Director General or the Deputy Assistant Secretary for Personnel and all evidence submitted by the participant and by the appropriate agency, will be available for inspection by the participant and designated representative, as may be appropriate, subject to the limitations of section 3 FAM 672.3-2b(2), and by the agencies.

c. New Evidence

When the participant has offered new evidence on appeal, or if the agency has information developed since submission of the case file, additional evidence may also be submitted by the agency.

d. Review and Determination of Appeal

The Under Secretary for Management reviews all appeals under this section, taking into account all of the data and information submitted by the participant or annuitant, all of the data and information previously considered by the Director General of the Foreign Service, or the Deputy Assistant Secretary for Personnel, and any additional evidence submitted by the appropriate agencies. The Under Secretary for Management may have such additional examinations or investigations made as are considered necessary.

On the basis of this review, the Under Secretary for Management makes the final determination of the participant's or annuitant's disability or incapacity within the meaning of section 808 of the Act.

3 FAM 672.3-9 Allowable Medical Examination Expenses

(TL:PER-33; 5-31-85)

(State Only)

a. Expenses, including travel, incurred in connection with the designation of physicians and the examinations required under section 3 FAM 672.3-3 and 3 FAM 672.3-6 are paid as follows:

(1) **Participants.** Expenses incurred in determining whether participants will be retired for disability or incapacity are paid under provisions of section 680;

(2) **Annuitants.** Upon approval of the Medical Director, the following expenses incurred for the reexamination of annuitants are paid from the Fund:

(a) Fees for the examinations; and

(b) Reasonable travel and subsistence expenses of the annuitant to and from the place of examination when the annuitant is able to travel, without regard to the Federal Travel Regulations;

(3) Reasonable travel and subsistence expenses of the designated physician(s) to and from the place of examination when the annuitant is physically unable to travel; and

(4) Such additional expenses for the examinations as are actually and necessarily incurred in the interest of the annuitant; for example, superior travel accommodations, hospitalization while undergoing examination, or travel expenses of an attendant.

b. Travel expenses in excess of the amounts allowable under section 3 FAM 680 are not normally approved.

3 FAM 672.4 Discontinued Service Retirement

(TL:PER-33; 5-31-85)
(State Only)

Any participant who is not eligible for an immediate annuity under section 3 FAM 672.1, 3 FAM 672.2, or 3 FAM 672.3 who separates from the Service after obtaining at least 5 years of creditable service towards retirement (excluding military or naval service) may, upon separation from the Service or at any time prior to becoming eligible for an annuity, elect:

a. To have contributions returned under section 3 FAM 673.8; or

b. To leave such contributions in the Fund and to receive a deferred annuity commencing at age 60. Effective at age 60, a former participant entitled to a deferred annuity shall have own annuity computed according to section 3 FAM 673 with survivor benefits as stated therein. If a former participant who has qualified for a deferred annuity dies before reaching age 60, the former participant's contributions will be paid in accordance with section 3 FAM 673.8, except that if such former participant was retired under section 607(c)(1) of the Act because of expiration of time in class, or section 608(b) of the Act based on relative performance, such death shall be considered a death in Service and entitle an eligible survivor to benefits under section 3 FAM 673.5-6.

3 FAM 672.5 Separation Without Annuity

3 FAM 672.5-1 Refunds or Transfers of Contributions Upon Separation Before Becoming Eligible for an Annuity or a Deferred Annuity

(TL:PER-33; 5-31-85)
(State Only)

a. Any participant who is separated from the Service with less than 5 years of creditable service shall receive a lump-sum payment under section 3 FAM 673.8.

b. Any participant who is separated from the Service with at least 5 years of creditable service (excluding military or naval service) may elect to receive a lump-sum payment under section 3 FAM 673.8 or to the contributions in the Fund and receive a deferred annuity, as provided in section 3 FAM 672.4. Such a separated participant may elect a lump-sum payment under section 3 FAM 673.8 up to the date the deferred annuity begins. An election to receive a lump-sum payment cannot be changed once it becomes final. A lump-sum payment election is considered final when the refund check is negotiated by the separated employee or by a former spouse if a share of the lump-sum payment is authorized under section 3 FAM 673.8-2.

c. Any participant who is separated and accepts a position in the Federal Government under another retirement system for civilian employees withdraws from participation in the System. The provisions of paragraphs a and b apply, or the participant may, subject to the approval of the gaining retirement system, have the lump-sum credit under section 3 FAM 673.8 and creditable service transferred to the gaining retirement system.

3 FAM 672.5-2 Documentation for Requesting a Refund or Transfer of Contributions

(TL:PER-33; 5-31-85)
(State Only)

The following documents must be received by the Department before the refund or transfer of compulsory Foreign Service contributions:

- a. A completed Optional Form 138 Application for Refund of Retirement Contributions (3 FAM 672 Exhibit 672.5-2) (see 4 FAM 487.21);
- b. Submission of the participant's current pay record by the budget and fiscal office to the appropriate agency; and
- c. For AID, USIA, FCS, FAS and APHIS, and PC employees, the transfer of the retirement file and retirement account.

If the funds are to be transferred in accordance with section 3 FAM 672.5-1 to the Civil Service Retirement and Disability System, a Form SF-2803, Application to Make a Deposit or Redeposit, Civil Service Retirement and Disability System, must be sent and certified by the employing agency.

3 FAM 672.6 Recovery of Overpayments

(TL:PER-33; 5-31-85)
(State Only)

Recovery of overpayments to an eligible annuitant under the Act may not be made from an individual when, in the judgment of M/COMP/FO, the individual is without fault and recovery would be against equity and good conscience or administratively infeasible (see 22 CFR Part 17 for procedure).

3 FAM 672.7 Waiver of Annuity

(TL:PER-33; 5-31-85)
(State Only)

An individual entitled to be paid an annuity may, for personal reasons, decline to accept all or any part of the annuity. However, a principal may not waive the portion of principal's own annuity authorized to be paid to a former spouse under sections 3 FAM 673.2 or 3 FAM 671.9 or to a beneficiary under section 3 FAM 671.8. An annuity waiver must be in writing and be sent to the Department (PER/ER/RET). A waiver may be revoked in writing at any time. Payment of the annuity waived may not be made for the period during which the waiver was in effect.

3 FAM 673 BENEFITS UNDER THE FOREIGN SERVICE RETIREMENT SYSTEM

3 FAM 673.1 Entitlements and Obligations

3 FAM 673.1-1 Lifetime Annuity

(TL:PER-33; 5-31-85)
(State Only)

Participants who retire under sections 3 FAM 672.1, 3 FAM 672.2, or 3 FAM 673.3 are entitled to a lifetime annuity commencing on the day following separation from active duty, or on such other date as is specified herein.

Former participants who qualify for a deferred annuity under section 3 FAM 672.4 are entitled to a lifetime annuity commencing at age 60. Survivorship obligations are determined and elections made as of the date annuity commences unless otherwise specified in this chapter. Annuities to former participants are payable through the date of death, unless discontinued by reason of recovery from disability under section 3 FAM 672.3. Annuities are suspended during periods of recall to active duty in the Foreign Service or reemployment by a Government agency pursuant to section 3 FAM 125.5.

3 FAM 673.1-2 Obligations

(TL:PER-33; 5-31-85)
(State Only)

Participants and former participants are obligated by the Act and these regulations to provide the following benefits to others and must accept the necessary reductions in their own retirement benefits to meet these obligations:

- a. A pension to a former spouse pursuant to section 3 FAM 673.2;
- b. A court-ordered apportionment of annuity to a previous spouse or child under section 3 FAM 671.8-1(6) (the benefit to a child referred to here is paid during the annuitant's lifetime as distinguished from the automatic survivorship annuity to a child described in section 3 FAM 673.5-7);
- c. A regular survivor annuity to a former spouse who has not remarried before age 60, and to a spouse to whom married when annuity commences, pursuant to sections 3 FAM 673.5-2 and 3 FAM 673.5-3;
- d. An additional survivor annuity for a spouse or former spouse under section 3 FAM 673.4-5 when elected by the participant or ordered by a court;

e. Lump-sum payments to a former spouse pursuant to section 3 FAM 673.8; and

f. Benefits ordered by a court under section 3 FAM 671.8 or specified in a spousal agreement under section 3 FAM 671.9.

3 FAM 673.2 Pension Benefits for Former Spouses

3 FAM 673.2-1 Entitlement

(TL:PER-33; 5-31-85)

(State Only)

a. Unless otherwise expressly provided by a spousal agreement under section 3 FAM 671.9 or a court order under section 3 FAM 671.8, a person who, after February 15, 1981, becomes a former spouse of a participant (or former participant who separated from the Service after February 15, 1981) and who has not remarried before becoming 60 years of age becomes entitled to a monthly pension benefit effective on a date determined under subsection 3 FAM 673.2-1 in an amount determined under subsection 3 FAM 673.2-3.

b. A former spouse shall not be qualified for a pension under this subsection if, before the commencement of that pension, the former spouse remarries before becoming 60 years of age.

c. A pension benefit under this section is treated the same as a survivor annuity for purposes of subsection 3 FAM 673.5-5b: a former spouse who elects to receive a pension under this section must waive simultaneous receipt of any survivor annuity.

3 FAM 673.2-2 Commencement and Termination

(TL:PER-33; 5-31-85)

(State Only)

a. The pension of a former spouse under this subsection commences on the latter of the day the principal becomes entitled to a Foreign Service annuity or on the first day of the month in which the divorce becomes final. (Suspension or reduction of a Foreign Service annuity because of reemployment does not affect the commencement of a pension to a former spouse. See section 3 FAM 673.2-4.) In the case of any former spouse of a disability annuitant, the pension of such former spouse shall commence on the latter of:

(1) The date the principal would qualify for an annuity (other than a disability annuity) on the basis of the principal's creditable service;

(2) The date the disability annuity begins; or

(3) The first of the month in which the divorce becomes final.

b. The pension of a former spouse and the right thereto terminate on:

(1) The last day of the month before the former spouse dies or remarries before 60 years of age; or

(2) The date the annuity of the former participant terminates unless the termination results from recall, reappointment, or reinstatement in the Foreign Service or reemployment in the Government service.

3 FAM 673.2-3 Computation and Payment of Pension to Former Spouse

(TL:PER-33; 5-31-85)

(State Only)

a. A pension to a former spouse is paid monthly on the same date that annuity is paid to the principal.

b. No spousal agreement or court order may provide for a pension or any combination of pensions to former spouses of any one principal which exceeds the net annuity of the principal as defined in section 3 FAM 671.8-2b.

c. A pension to a former spouse not fixed by a spousal agreement or court order shall equal the former spouse's pro rata share of 50 percent of the annuity to which the principal is entitled on the date the divorce becomes final, or, if not then entitled to an annuity, 50 percent of the annuity to which the principal first becomes entitled following that date. A pension to a former spouse of a disability annuitant shall be calculated on the basis of an annuity for which the participant would qualify if not disabled. A pension to a former spouse will be increased by the same percentage of each cost-of-living adjustment received by the principal under section 3 FAM 673.11.

d. The Department will initiate payment of a pension to a former spouse after complying with the notification and other procedures described in section 3 FAM 671.8.

e. If a pension can not be paid because a former spouse is missing, the principal may file an affidavit with PER/ER/RET that the principal does not know the whereabouts of the former spouse. In such a event, the principal and the Department will follow the procedures in section 3 FAM 673.5-4 in an effort to locate the former spouse. The annuity of the principal will be reduced by the amount of the pension to the former spouse even though the latter is not being paid. If the former spouse has not been located during the 12-month period following the date the principal files an affidavit under this section, the, annuity

of, the, principal, will, be, recomputed effective from its commencing date (or on the date following the last month a pension payment was made to the former spouse) and paid without reduction of the amount of the pension to the former spouse. If the former spouse subsequently is located, pension payments to that former spouse will be initiated at that time at the rate that would have been payable had they been paid continuously from the original effective date. The Department shall not be liable to make any pension payments to the former spouse for the missing period if the procedures under this section were faithfully complied with nor will the Department be responsible for recovering any payments made to the principal for the benefit of the former spouse.

3 FAM 673.2-4 Effect on Annuitant

(TL:PER-33; 5-31-85)
(State Only)

Any pension payable to a former spouse under this section or pursuant to any spousal agreement or court order shall be deducted from the annuity of the principal. (See section 3 FAM 671.8-4 concerning retroactive adjustment.) If the annuity of such a principal in any month is discontinued or reduced so that the net amount payable is less than the pension to the former spouse or spouses of the principal because of recall, reappointment, or reinstatement in the Foreign Service or reemployment in the Government service pursuant to section 125.5, the principal's salary, rather than annuity, shall be reduced by the amount of the pension payment(s). Such salary reductions shall be deposited in the Treasury to the credit of the Fund. See section 3 FAM 673.4-7a for pension adjustment at time annuitant reverts to retired status. If a pension to a former spouse is discontinued for any reason except a suspension pending a determination of entitlement, the annuity of the principal shall be recomputed effective as of the date of discontinuance of pension, and paid as if the pension to the former spouse had never been deducted.

3 FAM 673.2-5 Responsibility for Effecting Salary Reduction

(TL:PER-33; 5-31-85)
(State Only)

Whenever M/COMP/FO discontinues or reduces a Foreign Service annuity because the annuitant has been recalled, reappointed, or reinstated in the Foreign Service, or reemployed in a Government agency, it shall determine whether the annuitant's salary must be reduced pursuant to section 3 FAM 673.2-4. If so, it shall effect the salary reduction or inform the appropriate payroll office or employing agency of the requirement and the procedures to be followed.

3 FAM 673.3 Computation of Annuity to Members

3 FAM 673.3-1 Basic Formula

(TL:PER-33; 5-31-85)

(State Only)

a. Except as provided in section 3 FAM 673.3-2, the annuity of a participant shall be equal to 2 percent of participant's average basic salary for the highest 3 consecutive years of service, multiplied by the number of years not exceeding 35 of service credit computed under section 3 FAM 671.5.

b. A participant with creditable service for which deductions were not made, for any reason, may receive credit for this service in the computation of annuity benefits without making a special contribution, by accepting an annuity reduction of 10 percent of the amount owed determined under section 3 FAM 671.4-3a. A participant or survivor may make a special contribution to cover the amount owed for this period of service at any time before receipt of annuity. If a special contribution is not made by the participant or survivor, or installment payments are begun and not completed, the annuity otherwise payable is reduced by an amount equal to 10 percent of the balance due and unpaid, unless the participant elects to eliminate the service from credit for annuity computation purposes. The elimination of a period of service from credit is advisable only when the participant has sufficient other service for entitlement to the maximum service credit--35 years not counting credit for unused sick leave.

c. If a participant has service for which retirement contributions were made and refunded, a special contribution must be made for this service, or the service will not be creditable. If a special contribution to purchase such service is not completed before retirement, the participant or survivor in the case of death in service, may elect to have the net annuity (for example, minus health benefits and life insurance premiums and other mandatory deductions) offset against the amount owed to cover the required special contribution provided that the total amount owed can be collected from accrued annuity in 4 months or less. If the amount owed cannot be collected within 4 months, the special contributions must be paid in a lump-sum before the beginning of the annuity payments, or at least an initial payment must be sufficient so that the balance can be collected from the first 4 months of annuity payments, or the service can not be used in the computation of the annuity. (See section 3 FAM 671.4-3 for the payment of special contributions.)

d. If the annuitant dies during the offset period, the survivor annuity may be used to complete the offset.

e. Annuities are effective on the day after separation, or day after participant's pay status terminated and the age and service requirements have been met.

3 FAM 673.3-2 Exception to "Highest 3 Consecutive Years" Provision

(TL:PER-33; 5-31-85)
(State Only)

a. The annuity of any participant whose continuity of service in a position to which appointed by the President (whether or not confirmed by the Senate) is interrupted by appointment or assignment to any other position in the Executive Branch of comparable importance shall be computed on the basis of the highest 3 years of service (not necessarily consecutive).

b. When a participant serving in a position to which appointed by the President (whether or not confirmed by the Senate) is appointed or assigned to a position other than that of chief of mission, determinations shall be made as to:

(1) Whether participant's service was "interrupted;" and

(2) Whether the position to which appointed or assigned is comparable in importance to a position of chief of mission.

c. An interruption in the continuity of a participant's service as a chief of mission or in another position to which appointed by the President normally is deemed to occur when:

(1) It is determined that there are reasonable grounds for presuming that the participant would have continued to serve in the original position had the participant not been appointed or assigned to the new position; and

(2) The participant is appointed or assigned to the new position without having reverted to a permanent FS class following the termination of the participant's services in the original position. The determination whether the appointment or assignment constitutes an interruption of service shall be made by the Under Secretary for Management.

d. If the position to which the participant is appointed or assigned is not already on the list of comparable positions listed in section 554.3, the Director General of the Foreign Service may submit to the Under Secretary for Management for approval a recommendation that the position either is or is not comparable in importance to that of chief of mission.

e. In order for a participant to have the annuity computed on the basis of the provisions of this section, the position to which appointed or assigned must have been designated as comparable in importance before or at the time of participant's appointment or assignment to the position or during the period participant was in the position.

3 FAM 673.3-3 Sequence of Deductions

(TL:PER-33; 5-31-85)
(State Only)

Any required reductions in annuity shall be computed in the following sequence:

First, the annuity shall be reduced as described in section 3 FAM 673.3-1b for failure to make a deposit for past service;

Second, the annuity as so reduced shall be further reduced as required to provide any regular survivor annuity for a spouse or former spouse as described in section 3 FAM 673.4-2 or to provide a survivor annuity for a designated beneficiary as described in section 3 FAM 673.4-6;

Third, the annuity as so reduced shall be further reduced by any pension payable to a former spouse under section 3 FAM 673.2.

Finally, if a court has ordered an apportionment of annuity under section 3 FAM 671.8-1(6), this amount shall be deducted from the remaining annuity payable to the principal.

3 FAM 673.4 Types of Annuities to Members

3 FAM 673.4-1 Full Annuity

(TL:PER-33; 5-31-85)
(State Only)

If a participant retires and does not provide a survivor annuity to a spouse, former spouse, or designated beneficiary, the participant receives a "full" annuity. A full annuity means an annuity computed under section 3 FAM 673.3 without any survivorship reduction.

Example: Average salary \$20,000 and maximum of 35 years of creditable service.

Average basic annual salary for high-3 consecutive years of service	\$20,000
Multiplied by 2 percent	<u>.02</u>
	\$ 400

Multiplied by 35 years of creditable service	.35
Full Annuity	\$14,000

3 FAM 673.4-2 Reduced Annuity With Regular Survivor Annuity to Spouse or Former Spouse

(TL:PER-33; 5-31-85)
(State Only)

a. At commencement of annuity, a participant or former participant may provide a regular survivor annuity for any eligible former spouse and, within the limits of paragraph b, a regular survivor annuity to any spouse to whom the participant is then married as described in sections 3 FAM 673.5-2 and 3 FAM 673.5-3, respectively. A regular survivor annuity for a spouse or former spouse equals 55 percent of the portion of the retiree's annuity (up to the full amount) designated as the base for the survivor annuity. To provide the survivor annuity, the participant must accept a reduction in own full annuity equal to 2-1/2 percent of the first \$3,600 of the designated base, plus 10 percent of the balance of the base. If a regular survivor annuity is being provided for both a spouse and a former spouse, the bases for each are added and the calculation made as in the following example:

Participant's full annuity as computed in section 3 FAM 673.4	\$14,000
Maximum regular survivor annuity is 55 percent of full annuity	\$7,700

CASE I (Participant has a spouse and former spouse at retirement.) If the pro rata share for a former spouse is 75 percent, the base for this benefit will be 75 percent of \$14,000 is

\$10,500

The base for the maximum regular survivor annuity for a spouse would then be 25 percent of \$14,000, or \$3,500

Combined base	\$14,000
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Participant's full annuity reduced as follows: 2-1/2 percent of first \$3,600 of the base	\$ 90
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Plus 10 percent of the amount over \$3,600 (\$14,000 - \$3,600) \$10,400	1,040
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Total reduction in participant's reduced annuity	\$1,130
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Participant's reduced annuity	\$12,870
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Survivor annuity for former spouse: 55 percent of \$10,500 or \$5,775

Survivor annuity for spouse: 55 Percent of \$3,500 or \$1,925

CASE II (Participant married at retirement with no former spouse. All calculations made without reference to cost-of-living increases described in sections 3 FAM 673.5-5d and 3 FAM 673.11.)

Joint election of base for regular survivor annuity of 90 percent of the maximum, or 90 percent of \$14,000 or \$12,600

Participant's full annuity reduced as follows: 2-1/2 percent of first \$3,600 of the base	\$ 90
Plus 10 percent of the amount over \$3,600 (\$12,600-\$3,600) \$9,900	\$ 900
Total reduction in participant's reduced annuity	\$ 990
Participant's reduced annuity	\$13,010

In this example, if divorce occurs subsequent to retirement and a court orders a 75 percent share for the former spouse, the base for the survivor annuity for the former spouse would be 75 percent of \$14,000 or \$10,500

The participant's full annuity would then be reduced by \$780 in accordance with the above formula for this survivor benefit, and the reduced annuity would be \$14,000-\$780 or \$13,200

If the former spouse qualifies for a pension as described in section 3 FAM 673.2 based on a pro rata share of 75 percent, the pension would equal 50 percent of the participant's reduced annuity times 75 percent (50 percent x \$13,200 x 75 percent or \$4,957.50

The participant's reduced annuity would then be further reduced by this pension (\$13,200-\$4,957.50) to provide an annuity to the former participant of \$8,262.50

If this annuitant later remarries, the maximum base for the regular survivor annuity for the new spouse would be the amount designated at retirement, \$12,600, less the amount committed to the former spouse, \$10,500: \$12,600-\$10,500 or \$2,100. The survivor annuity for this spouse: 55 percent of \$2,100 or \$1,155.

The election of this benefit for the new spouse would be made individually by the annuitant since a marriage after retirement does not give a spouse a right to participate in the election.

If the election is made to provide a regular survivor annuity to the new spouse, all of the above calculations would be recomputed effective the first day of the month beginning 1 year after the date of the remarriage, as follows:

Base for survivor annuity for former spouse: 75 percent of \$14,000 or \$10,500.

Survivor annuity for former spouse: 55 percent of \$10,500 or \$5,775.

Base for survivor annuity for spouse: 15 percent of \$14,000 or \$2,100.

Survivor annuity for spouse: 55 percent of \$2,100 or \$1,155.

The combined base for the survivor benefits is \$10,500 plus \$2,100 or \$12,600. The annuity reduction on this combined base as computed above is \$990.

The participant's annuity after reduction for survivor benefit would be \$14,000-\$990 or \$13,010.

The pension for the former spouse would be 50 percent x \$13,010 x 75 percent or \$4,878.75.

The participant's annuity would be further reduced by this amount: \$13,010-\$4,878.75 to provide an annuity after this recalculation of \$8,131.25.

b. The maximum regular survivor annuity or combination of regular survivor annuities that may be provided under this section is limited to 55 percent of the principal's full annuity computed at retirement, under section 3 FAM 673.3-1. If an annuitant is recalled to active duty in the Foreign Service that annuitant may provide additional regular survivor annuities under section 3 FAM 673.4-7. The maximum regular survivor annuity or combination of regular survivor annuities that an annuitant who was married at retirement may elect or provide, pursuant to a court order or otherwise, after retirement in the event of annuitant's own divorce or remarriage, is limited to the amount provided at the time of initial retirement or reversion to retired status following recall service.

3 FAM 673.4-3 Marriage After Retirement

(TL:PER-33; 5-31-85)

(State Only)

If an annuitant who was unmarried at the time of retirement marries, the annuitant may within 1 year after such marriage irrevocably elect to receive a reduced annuity and to provide, subject to any obligation to provide a survivor annuity for a former spouse, a survivor annuity for the new spouse. If such an election is made, the principal's annuity shall be reduced in accordance with section 3 FAM 673.4-2 effective on the first day of the first month which begins at least 1 year after the date of the marriage. The reduction to the principal's annuity and the amount of the survivor annuity elected is based on the full annuity on the effective date of the election. Receipt by PER/ER/ RET of notice of an election under this section voids prospectively and any election previously made under section 3 FAM 673.4-6.

3 FAM 673.4-4 Death or Divorce of a Spouse and Remarriage After Retirement

(TL:PER-33; 5-31-85)
(State Only)

a. If the marriage of an annuitant who received a reduced annuity at retirement under section 3 FAM 673.4-2 to provide a survivor annuity for a spouse is dissolved by divorce or by death of the spouse, the retiree's annuity shall be recomputed, if necessary, as of the first of the month following the death or divorce. If the marriage was dissolved by death, the annuity shall be recomputed and paid at its full amount. If the marriage is dissolved by divorce, procedures in section 3 FAM 673.5-2b shall be followed.

b. In the event an annuitant affected by this paragraph remarries, the annuitant may elect within 1 year of remarriage to provide a survivor annuity for the new spouse equal in amount to the survivor benefit formerly in effect for the previous spouse less any amount committed for a former spouse. The annuity of a retiree making such an election shall be reduced effective on the first day of the first month which begins at least 1 year after the remarriage to the amount that would have been payable had there been no recomputation under paragraph a.

3 FAM 673.4-5 Reduced Annuity With Additional Survivor Annuity to Spouse or Former Spouse

(TL:PER-33; 5-31-85)
(State Only)

a. General Policy

This section provides an opportunity for a participant or former participant who has provided a regular survivor annuity to a former spouse to provide a survivor annuity to a second spouse or to another former spouse. The additional survivor annuity provided under this section generally is more costly than the regular survivor annuity because the participant is required to pay its full cost by deduction from salary or annuity, or otherwise, as specified in paragraph e. The participant must also be in normal health for the participant's age and pass a physical examination prescribed by the Secretary of State (M/MED) to be eligible to provide an additional survivor annuity under this section.

b. Limitation on Amount

Neither the total amount of additional survivor annuity or annuities under this section provided by any participant or former participant nor any combination of regular or additional survivor annuities for any one surviving spouse or former spouse of a principal may exceed 55 percent of the

principal's full annuity counting any supplemental annuity or recomputation of annuity because of recall service. An additional survivor annuity provided by any principal shall be further limited to the amount that can be provided by a monthly payment which is not greater than the principal's net annuity described in section 3 FAM 671.8-2b. The amount of any additional survivor annuity provided by a spousal agreement effective before the principal's retirement, shall be reduced as necessary by PER/ER/RET after the principal's retirement to comply with this limitation. Any amount paid by a participant for the portion of additional survivor annuity canceled pursuant to this paragraph shall be treated as an additional lump-sum payment under paragraph e and used to increase the amount of the additional annuity. A participant who separates from the Service without entitlement to any annuity is not entitled to provide an additional survivor annuity. Payments in such a case would be discontinued as described in paragraph e.

c. Procedures to Grant Additional Survivor Annuity

A participant or former participant who has provided a regular survivor annuity to a former spouse who wishes to provide, or who is ordered by a court to provide an additional survivor annuity under this section to a spouse or another former spouse, shall do so by filing a spousal agreement with PER/ER/RET on a form acceptable to PER/ER/RET. Such an agreement will be irrevocable when accepted by PER/ER/RET unless the beneficiary of the additional survivor annuity is subsequently made a beneficiary of a regular survivor annuity in equal amount. Within the limitations specified in paragraph b, an individual may be made the beneficiary of both a regular and an additional survivor annuity. A spousal agreement granting an additional survivor annuity to a spouse will remain valid in the event the marriage is dissolved and the spouse qualifies as a former spouse under the definition in section 3 FAM 671.2(12).

d. Eligibility for Additional Survivor Annuity

A spouse or former spouse must meet the same criteria (section 3 FAM 671.2(w) or 3 FAM 671.2(l)) to be eligible for an additional survivor annuity as a spouse or former spouse must meet to be eligible for a regular survivor annuity. Payment of a special survivor annuity will commence on the day after the participant dies and shall terminate on the last day of the month before death or remarriage before attaining age 60. If it is discontinued because of remarriage, it will not be resumed.

e. Payment for Additional Survivor Annuity

Payment for an additional survivor annuity will commence on the first of the month following the effective date of a spousal agreement providing the additional survivor annuity. The effective date will be the date of acceptance of the spousal agreement by PER/ER/RET (upon a finding that the agreement conforms to the law and regulations) or such later date as may be specified in

the agreement. No payment will be made to a beneficiary under the agreement if the principal dies before its effective date. Accordingly, in order to give protection to a beneficiary during active service, the agreement must be made effective, and payments commence, during active service. Payment will be made by a participant or annuitant by deduction from salary or annuity. Payment will be made by a former participant while awaiting commencement of a deferred annuity by direct payment to the Department, Office of Financial Operations (M/COMP/FO). Payments not received by the due date may, at the option of M/COMP/FO and with notice to the principal and the beneficiary, be collected from the principal's lump-sum account. Amounts so collected must be repaid by the principal with interest compounded at 10 percent annually to prevent exhaustion of the lump-sum account. If the lump-sum account does become exhausted, any right to the lump-sum payment under section 3 FAM 673.8 and survivorship rights under this paragraph will expire on that date. If the principal dies with an amount owing, it shall be collected by deducting from the survivor annuity or lump sum account.

Monthly payments may be reduced or eliminated by direct payment to M/COMP/FO by any participant or former participant under terms mutually agreed upon by the participant and PER/ER/RET. Minimum monthly payments will be based upon actuarial tables prescribed from time to time by M/DGP with the advice of the Secretary of Treasury. Such tables will be calculated so that the present value of all payments equal the present value of the survivor annuity. If new tables are prescribed, they would be applicable to additional survivor annuities provided by spousal agreements that become effective on or after the effective date of the new tables.

Additional survivor annuities will be increased by regular cost-of-living adjustments under section 3 FAM 673.5-5d from their commencing dates only when so specified at the option of the participant or former participant in a spousal agreement. Additional survivor annuities are not increased on their effective date by the cumulative percentage of adjustments received by the deceased principal, as are regular survivor annuities. Monthly payments will be higher if cost-of-living adjustments are provided.

In the event of the disqualification of a beneficiary for an additional survivor annuity because of death, remarriage before age 60, or divorce from the principal and failure to meet the definition of "former spouse," or in the event of an authorized reduction or cancellation of an election for an additional survivor annuity, the monthly payment for such discontinued or reduced additional survivor annuity will be discontinued or reduced, as appropriate, effective at the beginning of the first month following termination or reduction of the benefit. Except as otherwise specified in paragraph b, any amount paid for such discontinued or reduced benefit by a participant or former participant in excess of the minimum monthly payments described above shall be refunded to the participant or former participant with interest calculated at the annual rate used in the last evaluation of the System or at such higher rate as may be authorized by M/COMP/FO as will not cause a loss to the Fund. The following

table illustrates the minimum monthly payments schedule in effect February 15, 1981.

Age of Principal and Beneficiary on effective Date of Spousal Agreement	Minimum Monthly Payment Required to Provide an Additional Survivor Annuity of \$100 per Month	
	No COLA	With, COLA Commencement of Annuity
40	\$ 7.49	\$12.34
50	14.18	22.01
60	23.55	33.90
70	35.57	47.12
		Where Spouse Annuity and Participant's Contributions Increase With COLA
		From Date of Election
40		\$17.07
50		26.45
60		36.92
70		48.88
		Where Spouse Annuity Increases With COLA
		From Date of Election
40		\$31.12
50		42.72
60		53.08
70		62.64

Reduction from annuity to a principal to pay for an additional survivor annuity will be in the nature of an allotment and will not affect computations of cost-of-living adjustments to the principal.

3 FAM 673.4-6 Reduced Annuity With Annuity Payable to Designated Beneficiary Other Than Spouse

(TL:PER-33; 5-31-85)
(State Only)

a. At the time of retirement (commencement of annuity), an unmarried participant who does not have a former spouse for whose benefit a reduction is made under section 3 FAM 673.5-2, may elect, by submission of Form JF-37, Election of Annuity Benefits, to receive a reduced annuity during lifetime

and to provide for an annuity equal to 55 percent of the participant's reduced annuity payable after death to a beneficiary whose name shall be designated in writing.

b. The annuity payable to a participant making such election is reduced by 10 percent of an annuity computed as provided in section 3 FAM 673.4-1 and by 5 percent of an annuity so computed for each full 5 years the person designated is younger than the retiring participant. The total reduction shall not exceed 40 percent.

Example: If a retiring participant is entitled to a life annuity of \$14,000 and names as beneficiary a person who is 19 years younger, the annuity to which annuitant is otherwise entitled is reduced by 25 percent, thus providing a reduced annuity of \$10,500. The designated beneficiary's annuity will be 55 percent of the participant's reduced annuity or in this example the designated beneficiary's annuity is \$5,775.

c. No election of a reduced annuity payable to a beneficiary is valid until the participant satisfactorily passes a physical examination. M/MED will arrange for an examination without cost to the participant to determine whether the participant is in normal health for participant's age.

d. The annuity payable to a beneficiary under this section begins on the day after the annuitant dies, and terminates on the last day of the month preceding the survivor's death.

e. An annuity which is reduced under this section shall be recomputed, effective the first day of the month following the death of the beneficiary named, and paid as if the annuity had not been so reduced.

3 FAM 673.4-7 Benefits for Recall Service

(TL:PER-33; 5-31-85)
(State Only)

a. Annuity of Recalled Participant

Any participant who is recalled to the Service under the provisions of section 125.5l shall be entitled, while so serving, in lieu of annuity to the full salary of the class in which serving. During such service, the recalled annuitant shall make contributions to the Fund under section 3 FAM 671.4-1. If a share of the annuity is being paid as a pension to a former spouse under section 3 FAM 673.2, that share shall be deducted from the salary of the recalled annuitant during the period of the recall service. See section 3 FAM 673.2-4. Upon reversion of the annuitant to retired status, any pension payable to a former spouse that was being deducted from the salary of the principal shall again be deducted from the annuity of the principal which shall be determined as follows:

(1) If the recall service lasts less than 1 year, retirement contributions made during the recall period will be refunded under section 3 FAM 673.8-4 and the former annuity will be resumed at the previous rate adjusted by any cost-of-living increases that became effective during recall service.

(2) If the recall service lasts between 1 and 5 years, the annuitant will be entitled to elect benefits under paragraph (1) above, or receive both the former annuity adjusted by cost-of-living increases and a supplemental annuity computed under section 3 FAM 673 on the basis of service credit and average salary earned during the recall period, irrespective of the number of years of service credit previously earned.

(3) If the recall service lasts 5 years or more, the annuitant will be entitled to recomputation of the annuity as if there had been no previous retirement, or elect benefits under paragraph (1) or (2) above.

(4) An annuitant may receive credit in any computation under paragraph (2) or (3) for any Federal service performed subsequent to the separation upon which the original annuity was computed provided a special contribution is made for such service under section 3 FAM 671.4-3.

(5) An annuitant entitled to a supplemental annuity under paragraph (2) or a recomputed annuity under paragraph (3) is obligated, in the absence of a court order or spousal agreement to the contrary, to have those annuities reduced to provide the benefits described in section 3 FAM 673.1-2 to any spouse or former spouse to whom married during any portion of the recall service. An annuitant must accept a reduction of 10 percent of own supplemental annuity in order to provide a supplemental survivor annuity to a spouse or former spouse. The maximum supplemental survivor annuity equals 55 percent of the supplemental annuity. If, upon reversion to retired status, an annuitant has a former spouse entitled to a pro rata share or some other share of the supplemental survivor annuity, but no spouse, the appropriate share of the supplemental annuity shall be reduced by 10 percent to provide such former spouse a share of the maximum supplemental survivor annuity.

b. Survivor Benefit for Death During Recall Service

(1) If an annuitant entitled to a reduced annuity under section 3 FAM 673.4-2 dies in service after being recalled and is survived by a spouse or former spouse entitled to a survivor annuity based on the service of such annuitant, such survivor annuity shall be computed as if the recall service had otherwise terminated on the day of death and the annuity of the deceased had been resumed in accordance with paragraph a. If such death occurs before the annuitant had completed sufficient recall service to attain eligibility for a supplemental annuity, a lump-sum payment consisting of the retirement contributions made by the principal during the recall period will be made pursuant to section 3 FAM 673.8-5. A former spouse is not entitled to any portion of a lump-sum payment made to survivors. If such death occurs after

the annuitant had completed sufficient recall service to attain eligibility for a supplemental annuity, a surviving spouse or surviving former spouse who was married to the participant at any time during a period of recall service shall be entitled to elect, in addition to any other benefits and in lieu of any lump-sum refund of retirement contributions made during the recall service, a supplemental survivor annuity computed and paid under section 3 FAM 673.4-7a(5) as if the recall service had otherwise terminated.

If the annuitant had completed sufficient recall service to attain eligibility to have own annuity determined anew, a surviving spouse or such a surviving former spouse may elect, in lieu of any other survivor benefit under section 3 FAM 673.5 to have the rights of the annuitant redetermined and to receive a survivor annuity computed under sections 3 FAM 673.5-2 or 3 FAM 673.5-3 on the basis of the total service of the annuitant. A pro rata share of any supplemental survivor benefit for a former spouse shall be computed on the basis of the total service during the recall period and months of marriage during such period. If the surviving spouse and surviving former spouse elect different benefits under this paragraph, the former spouse will receive the pro rata share of the benefits the former spouse elects and the spouse will receive the reciprocal share of the benefit the spouse elects.

(2) In the event an annuitant dies during recall service and is survived by a former spouse to whom not married during any period of the recall service, such former spouse will not be entitled to any benefits based on the recall service.

3 FAM 673.4-8 Benefits From Voluntary Contributions

(TL:PER-33; 5-31-85)
(State Only)

a. The voluntary contribution account is the sum or unrefunded amounts voluntarily contributed to the Fund before January 2, 1977, by any participant or former participant under section 881 of the 1946 Act or a prior provision of law. It earns interest at the rate of 3 percent compounded annually to the date of separation from the Service or, in the case of a participant separated with entitlement to a deferred annuity, to the date the voluntary contribution account is claimed, or to the commencing date fixed for the deferred annuity or to the date the participant becomes eligible for an annuity or a deferred annuity and at the participant's election, shall be:

- (1) Returned to the contributor in a lump-sum payment (Form JF-52); or
- (2) Used to purchase an additional life annuity; or

(3) Used to purchase an additional life annuity with a cash payment on death to a beneficiary whose name shall be designated in writing by the participant to PER/ER/RET equal to the difference, if any, between the amount that would have been payable under (1) above and the sum of the annuity payments made herein; or

(4) Used to purchase an additional life annuity for the participant and a life annuity commencing on participant's death payable to a beneficiary whose name shall be designated in writing by the participant to PER/ER/RET, with, a, guaranteed, return to, the beneficiary or a designated legal representative of an amount equal to the cash payment referred to in paragraph (3) above (Form JF-35).

b. A voluntary contribution account may be paid in lump-sum at any time following receipt of an application from a present or former participant provided the application is filed before payment of any additional annuity. If not paid sooner, the account will be paid when the participant separates from the Service for any reason without entitlement to an annuity or a deferred annuity, or when a former participant dies or otherwise withdraws compulsory contributions to the Fund.

c. If a participant dies in service, or after separation but before retirement, the voluntary contribution account with interest is payable to the person or persons entitled, in the order of precedence indicated in section 3 FAM 673.8-5.

3 FAM 673.5 Survivor Benefits

3 FAM 673.5-1 Kinds of Survivor Benefits

(TL:PER-33; 5-31-85)

(State Only)

If a participant or former participant dies in active service or after retirement, regular survivor annuities are payable under terms of this section to an eligible surviving spouse, former spouse or child and to a designated beneficiary under section 3 FAM 673.4-6. Also, if all rights to annuity and survivor annuity terminate before exhaustion of the participant's lump-sum credit, a lump-sum payment is made pursuant to section 3 FAM 673.8. In addition to the above, an additional survivor annuity, a supplemental survivor annuity and a survivor annuity based on voluntary contributions made before January 2, 1977, may be payable to an eligible survivor under sections 3 FAM 673.4-5, 3 FAM 673.4-7 and 3 FAM 673.4-8, respectively. If any participant or former participant makes an election, files a spousal agreement or becomes subject to a court order to provide a regular survivor annuity for a spouse or former spouse and does not subsequently become entitled to leave a survivor annuity under these regulations (because of separation from the Service and withdrawal of contributions, death after separation but before commencement

of a deferred annuity, or for any other reason), none will be paid and such election, spousal agreement, or court order to provide such survivor annuity will have no force or effect.

3 FAM 673.5-2 Regular Survivor Annuity for a Former Spouse

(TL:PER-33; 5-31-85)

(State Only)

a. Divorce Before Retirement

If a participant or former participant is divorced before commencement of annuity, any former spouse shall be entitled to a pro rata share of such a principal's maximum regular survivor annuity (based on service performed before the first date the principal becomes eligible for an annuity following the divorce) unless a different amount is elected in a spousal agreement filed with PER/ER/RET within 12 months after the divorce becomes final or at the time of retirement, whichever occurs first, or unless a different amount is specified by a court before the death of the principal. The principal's annuity shall be reduced at the commencing date under section 3 FAM 673.4-2 in order to provide the survivor annuity committed to the former spouse.

b. Divorce After Retirement

In the event an annuitant is divorced after retirement (commencement of annuity), the maximum survivor annuity that may be provided for that former spouse is limited to the amount provided for that person at the time of retirement. Within that limit, the former spouse is entitled to a pro rata share of the participant's maximum survivor benefit (based on service performed before the divorce) unless a different amount was elected in a spousal agreement filed with PER/ER/RET at the time of retirement, or in the case of retirement before February 15, 1981, filed with PER/ER/RET within 12 months after the divorce becomes final, or unless a different amount is specified by a court before the death of the principal. For this purpose, a joint election notarized and filed with PER/ER/RET at the time of retirement is considered a spousal agreement. If the survivor annuity for the former spouse is reduced at the time of the divorce (because the pro rata share or the amount specified in a spousal agreement or court order is less than the amount elected at retirement), the principal's annuity shall be recomputed and paid, effective on the date the survivor benefit is reduced, as if the lower amount had been elected at the outset of retirement.

c. Death or Remarriage of Former Spouse and Transfer of Survivor Benefit to a Spouse

Remarriage below age 60 or death of a former spouse while a principal is alive will disqualify the former spouse for benefits under this section. In the event of such a remarriage or death of a former spouse, the portion of a

principal's survivor annuity committed to that person will become available for transfer to any spouse. If such a remarriage or death of the former spouse occurs after the principal's annuity commences, any reduction in the principal's annuity for that former spouse will be discontinued effective at the beginning of the first month following the remarriage or death unless the annuitant elects to provide or to increase a survivor benefit for a spouse. Such an election may be made within 1 year after the annuitant receives notice of the remarriage or death of the former spouse.

The Department (PER/ER/RET) and the annuitant shall each notify the other promptly whenever either receives independent notice of such a remarriage or death. If an election to transfer survivor benefits to a spouse is not made by the annuitant, the annuity will be recomputed and paid as if there had been no reduction for the discontinued survivor benefit. If an annuity is so recomputed and an election is subsequently made to designate as beneficiary a spouse to whom married for at least 1 year at the time the election is made, the principal's annuity shall be restored retroactively to its former, lower rate and then adjusted by cost-of-living increases that have occurred since the date of the first recomputation. If an election is made for a spouse when the marriage has not yet lasted a year, the procedures in section 3 FAM 673.4-4 shall be followed.

d. Amount of Survivor Annuity

The amount of a regular survivor annuity is determined under section 3 FAM 673.5-3c.

e. Special Rules for Election of Survivor Annuity for a Person Who is a Former Spouse on February 15, 1981

(1) Any participant, or former participant eligible for a deferred annuity which has not yet commenced, who, on February 15, 1981, had a former spouse, may at any time before commencement of annuity, elect, with the consent of any spouse to whom married at the time of the election, to receive a reduced annuity and provide a regular survivor annuity for such former spouse. Such survivor annuity shall be limited by section 3 FAM 673.4-2b. Any election under this paragraph for a former spouse will reduce the amount of any regular survivor annuity that may subsequently be provided for any spouse or other former spouse.

(2) Any former participant in receipt of an annuity who had a former spouse on February 15, 1981 and who had not committed own entire annuity as a base for a regular survivor annuity for a spouse or any other former spouse, could, before December 31, 1982, designate any portion of the uncommitted base as the base for a regular survivor annuity for such former spouse.

(3) The annuity of a former participant making an election under this paragraph shall be reduced under section 3 FAM 673.4-2a effective February 15, 1981, or from its commencing date if later.

(4) An election under this paragraph shall be made by filing a spousal agreement with PER/ER/RET under section 3 FAM 671.9. A spousal agreement to provide a regular survivor annuity under this paragraph for a former spouse may be revoked or amended, after its acceptance by PER/ER/RET as in accordance with the Act and these regulations, only by agreement of the parties up to the last day allowed by this paragraph for filing such an agreement. Thereafter, it is irrevocable. If a participant dies in service after having filed a valid election under this section, a survivor annuity will be paid to an eligible former surviving spouse in accordance with the terms of the election.

3 FAM 673.5-3 Regular Survivor Annuity For a Spouse

(TL:PER-33; 5-31-85)

(State Only)

a. In the absence of a joint election or a spousal agreement to the contrary, a participant or former participant who is separated from active service on or after February 15, 1981, who is married at the commencement of own annuity shall provide a regular survivor annuity for a spouse under section 3 FAM 673.4-2 equal to the maximum amount that remains available under limitations stated in paragraph b of that section after allowing for any commitment of a regular survivor annuity for a former spouse who has not remarried before age 60 and who is alive on the date the former participant becomes eligible for an annuity.

b. A regular survivor annuity is also payable to a surviving spouse for whom a principal elected an annuity under sections 3 FAM 673.4-3, 3 FAM 673.4-4, or 3 FAM 673.5-2c following a marriage after commencement of the principal's annuity.

c. The amount of a regular survivor annuity equals 55 percent of the base designated for the benefit at the time the principal's annuity commenced, adjusted by the total percentage of cost-of-living increases under section 3 FAM 673.11 the principal was receiving at death.

d. A survivor annuity is payable to a surviving spouse only if that person was married to the principal at the time of the principal's death or if the spouse became a former spouse under the definition in section 3 FAM 671.2(12).

3 FAM 673.5-4 Procedure in Event a Spouse or Former Spouse is Missing

(TL:PER-33; 5-31-85)
(State Only)

If a participant or former participant has a spouse or former spouse whose whereabouts are unknown, such participant may elect to reduce or eliminate the share of a regular survivor annuity provided for that person under sections 3 FAM 673.5-2 or 3 FAM 673.5-3 by filing an affidavit with PER/ER/RET stating that the participant's spouse or former spouse is missing and giving full particulars. The information provided shall include the missing person's full name, last known address, date last heard from, circumstances of the disappearance, and a description of the effort that has been made to locate the individual. Thereafter, the participant shall take such additional steps to locate the missing person as may be directed by PER/ER/RET. That office shall also attempt to locate the missing person by sending a letter to the individual's last known address given in the Department's files, to the address given on the affidavit, and, if a Social Security number is known, to the Social Security Administration for forwarding. The election and affidavit may be filed at any time before commencement of annuity. It must remain on file with PER/ER/RET for at least 1 year before being given irrevocable effect by the Department. If the annuity to the former participant becomes effective before the expiration of this 1 year period, the annuity shall be computed and paid without reference to the election filed under this section. Following this 1-year period, or at the commencement of annuity, if later, if the missing person has not been located, the affidavit may be reaffirmed by the participant, after which an election by the participant to reduce or eliminate the share of regular survivor annuity for the missing person shall be given irrevocable effect by the Department. If the annuity to the former participant has commenced, it shall be recomputed and paid retroactively to give effect to any election made under this section.

3 FAM 673.5-5 Commencement, Termination, and Adjustment of Annuities

(TL:PER-33; 5-31-85)
(State Only)

a. An annuity payable from the Fund to a surviving spouse or former spouse begins on the day after the participant or annuitant dies and stops on the last day of the month before the survivor's (1) remarriage before age 60, or (b) death. If a survivor annuity is terminated because of remarriage, the annuity is restored at the same rate effective on the date such remarriage is terminated, provided any lump-sum paid upon termination of the annuity is returned to the Fund. The termination of a surviving spouse annuity due to remarriage does not apply to a survivor annuitant who is a surviving spouse of

a participant who died in service or retired before October 1, 1976, unless elected following a marriage after retirement under circumstances described in section 3 FAM 673.4-3 or 3 FAM 673.4-4.

b. A surviving spouse or former spouse shall not become entitled to a survivor annuity or to the restoration or a survivor annuity payable from the Fund unless the survivor elects to receive it instead of any other survivor annuity to which entitled under this or any other retirement system for Government employees. (For this purpose, neither the Social Security system nor the military retirement system is considered a retirement system for Government employees.) This restriction does not apply to a survivor annuitant who is a surviving spouse of a participant who died in service or retired before October 1, 1976, unless the survivor annuity was elected under circumstances described in section 3 FAM 673.4-3 or 3 FAM 673.4-4.

c. A child's annuity begins on the day after the participant dies, or if a child is not then qualified, on the first day of the month in which the child becomes eligible. A child's annuity shall terminate on the last day of the month which precedes the month in which eligibility ceases.

d. Regular and supplemental survivor annuities to a spouse or former spouse of an annuitant described in section 3 FAM 673.4-2, 3 FAM 673.4-3, and 3 FAM 673.4-7 and survivor annuities to designated beneficiaries described in section 3 FAM 673.4-6 are increased from their effective date by the cumulative percentage of cost-of-living increases the annuitant was receiving under section 3 FAM 673.11 at death. The dollar amounts specified in the Act for survivor annuities to children of participants and annuitants are increased from the effective date of the annuity by the cumulative percentage of all cost-of-living increases that have occurred under 5 U.S.C. 8340 since October 31, 1969, as explained in section 3 FAM 673.5-7. All annuities payable to survivors on the date a cost-of-living adjustment becomes effective under section 3 FAM 673.11 are increased by that percentage except (1) the first increase under section 3 FAM 673.11 to a surviving spouse of a participant who dies in service shall be pro rated as described in section 3 FAM 673.11d, (2) annuities based on voluntary contributions described under section 3 FAM 673.4-8, and (3) additional survivor annuities under section 3 FAM 673.4-5 when the spousal agreement authorizing the annuity makes no provision for cost-of-living increases.

e. The annuity of survivors becomes effective as specified in this section but is not paid until the survivor submits an application, Form JF-38, Application for Death Benefits, 3 FAM 673, Exhibit 673.5-5e, supported by such proof as may be required, for example, death, marriage, and/or divorce certificates. In the event that such an application with supporting documentation is not submitted during an otherwise eligible beneficiary's lifetime, no annuity is due or payable to the beneficiary's estate.

3 FAM 673.5-6 Death During Active Duty

(TL:PER-33; 5-31-85)

(State Only)

a. Annuity for Surviving Former Spouse

In the event a participant dies before separation from the Service and leaves a former spouse, such former spouse is entitled to a regular survivor annuity under section 3 FAM 673.5-2 computed as if the participant had retired on the date of death unless a court order or spousal agreement is on file in the Department waiving such entitlement or providing for some other computation, or unless the former spouse has been found missing and an election filed under the procedures of section 3 FAM 673.5-4 waiving a survivor benefit for that person. Any assumed service authorized to be used under paragraph b in computing the annuity for a surviving spouse may not be counted as "years of marriage" when determining whether the previous spouse qualifies as a "former spouse" under the definition in section 3 FAM 671.2(12) or when computing the pro rata share under section 3 FAM 671.2(20). A former spouse is entitled to an additional survivor annuity under section 3 FAM 673.4-5 provided death occurs on or after the effective date of a spousal agreement providing for the additional annuity.

b. Annuity for Surviving Spouse

If a participant who has at least 18 months of service credit (excluding military and naval service) toward retirement under the System dies before separation from the Service, and is survived by a spouse as defined in section 3 FAM 671.2(23), such survivor shall be entitled to an annuity equal to 55 percent of the annuity computed under section 3 FAM 673.3-1 less any annuity payable to a former spouse under paragraph a. If the participant had less than 3 years of creditable civilian service at the time of death, the survivor annuity is computed on the basis of the average salary for the entire period of such service. If, at time of death, the participant had less than 20 years of creditable service, the annuity shall be computed on the assumption that the participant has had 20 years of service, but such additional service credit shall in no case exceed the difference between the participant's age on the date of death and age 65. A spouse is entitled to an additional survivor annuity under section 3 FAM 673.4-5 provided death occurs on or after the effective date of a spousal agreement providing for the additional annuity.

c. Annuity for a Child or Children

If a participant described in paragraph b is survived by a child or children, each surviving child is entitled to an annuity as described in section 3 FAM 673.5-7.

d. Annuity Changes

Annuities based on a death in service are subject to the provisions of section 3 FAM 673.5-5 governing commencement, adjustment, termination, and resumption of annuities.

3 FAM 673.5-7 Annuity Payable to Surviving Child or Children

(TL:PER-33; 5-31-85)

(State Only)

a. Statutory Rates

If a participant who has at least 18 months of service (excluding military and naval service) credit under the System dies in service, or if an annuitant who was a former participant dies, annuities are payable to a surviving child or children, as defined in section 3 FAM 671.2(6) as follows:

(1) **When Survived by Spouse and Child or Children.** If a principal is survived by a wife or husband and by a child or children, in addition to any other annuity, there shall be paid to or on behalf of each child an annuity equal to the smaller of:

(a) \$900;

(b) \$2,700 divided by the number of children--adjusted under paragraph b.

(2) **When Survived by a Child or Children But No Spouse.** If the principal is not survived by a wife or husband, but by a child or children each surviving child shall be paid an annuity equal to the smaller of:

(a) \$1,080;

(b) \$3,240 divided by the number of children--adjusted under paragraph b.

b. Adjusted Rates

In order to reflect cost-of-living increases, the amounts referred to in paragraphs (1) and (2) above are increased from the commencing date of the annuity to each child by the cumulative percentage of all cost-of-living increases that have occurred under 5 U.S.C. 8340 since October 31, 1969. The commencing rate of annuity paid to surviving children whose annuities commenced on recent dates are shown in the table in subchapter S17-3 of Appendix A of section 3 FAM 675.

c. Recomputation of Annuity for Child or Children

If a surviving wife or husband dies or the annuity of a child is terminated, the annuities of any remaining children shall be recomputed and paid as though such spouse or child had not survived the participant. If the annuity to a surviving child who has not been receiving an annuity is initiated or resumed, the annuities of any other children shall be recomputed and paid from the date as though the annuities to all currently eligible children in the family were then being initiated.

3 FAM 673.5-8 Bar Against Concurrent Payment Under This Act and the Workers' Compensation Act

(TL:PER-33; 5-31-85)
(State Only)

Except as stated below, survivor annuities and survivors' compensation for work injuries under 5 U.S.C. 8102 are not payable concurrently if both are based on the death of the same employee. A survivor entitled to both must elect which of the two benefits the survivor prefers. Should all eligible survivors of a deceased employee elect to receive the compensation benefit rather than the survivor annuity, their rights to the latter are terminated and, if the lump-sum credit has not been exhausted, a lump-sum payment will become due under section 3 FAM 673.8. The one exception to this rule occurs when a widow or widower is being paid the balance of a scheduled compensation award under 5 U.S.C. 8107 due the deceased employee. If so, the widow or widower may receive the survivor annuity and compensation award concurrently.

3 FAM 673.6 Minimum Annuity

(TL:PER-33; 5-31-85)
(State Only)

a. The monthly rate of an annuity payable to an annuitant other than a child shall not be less than the smallest primary insurance amount (including cost-of-living increases added to that amount) authorized to be paid under Title II of the Social Security Act, chapter 7, subchapter II, Title 42 of the U.S. Code.

b. The monthly rate of an annuity payable to a surviving child shall not be less than the amount payable to a survivor under paragraph a or 3 times such amount divided by the number of surviving children in any family eligible for an annuity, whichever is the lesser.

c. Paragraphs a and b above will not apply to an annuitant or a survivor who is or becomes entitled to receive from the United States an annuity or retired pay under any other civilian or military retirement system, benefits under title II of the Social Security Act (42 U.S.C. 401 et seq.), a pension, veterans' compensation, or any other periodic payment of a similar nature, when such payments are equal to or greater than the minimum payment.

3 FAM 673.7 Employment in a Government Agency

(TL:PER-33; 5-31-85)
(State Only)

(See sections 3 FAM 125.5-3 and 3 FAM 673.2-4.)

3 FAM 673.8 Lump-Sum Payment

3 FAM 673.8-1 Lump-Sum Credit

(TL:PER-33; 5-31-85)
(State Only)

“**Lump-sum credit**” is the compulsory and special contributions to a participant's or former participant's credit in the Fund for the participant's first 35 years of service (see section 3 FAM 673.9 for treatment of contributions after 35 years) plus interest thereon computed from the midpoint of each service period and compounded at four percent annually to the date of separation or December 31, 1976, whichever is earlier, and after such date, for a participant who separates from the Service after completing at least 1 year of service (exclusive of military and naval service) and before completing 5 years of such service, at the rate of three percent annually to the date of separation. Interest shall not be paid for a fractional part of a month in the total service or on compulsory and special contributions from the annuitant for recall service or other service performed after the date of separation which forms the basis for annuity.

3 FAM 673.8-2 Share Payable to a Former Spouse

(TL:PER-33; 5-31-85)
(State Only)

A former spouse of a former participant is entitled to a pro rata share of 50 percent of any lump-sum payment authorized to be paid by section 3 FAM 673.8 to a former participant who separated from the Service on or after February 15, 1981--including payments to another retirement system on behalf of a former participant--unless otherwise directed by a court or a spousal agreement.

3 FAM 673.8-3 Payment to Former Participant

(TL:PER-33; 5-31-85)
(State Only)

Whenever a participant becomes separated from the Service without eligibility for an immediate or deferred annuity under section 3 FAM 672, the lump-sum credit shall be paid to the participant. See section 3 FAM 672.5 for application procedure.

3 FAM 673.8-4 Refund After Recall Service

(TL:PER-33; 5-31-85)
(State Only)

Whenever a participant becomes separated from the Service following a period of recall service without becoming eligible for or electing a supplemental or recomputed annuity under section 3 FAM 673.4-7, the annuitant's compulsory contributions to the Fund for such service together with any special contributions the annuitant may have made for other service performed after the date of separation from the Service which forms the basis for annuity, shall be returned.

3 FAM 673.8-5 Payment After Death of Principal

(TL:PER-33; 5-31-85)
(State Only)

If a participant or former participant dies and no claim for annuity is payable, the lump-sum credit is paid in the order of precedence stated below. If all Foreign Service annuity rights based on the Service of a deceased participant or annuitant terminate before the total annuity paid equals the lump-sum credit, the difference is paid in the following order of precedence after establishment of a valid claim:

a. To the surviving beneficiary or surviving beneficiaries last designated by the participant or annuitant (hereafter: principal) before or after retirement in a signed and witnessed statement received by PER/ER/RET before the principal's death. A designation change or cancellation of beneficiary in a will or other document not so executed and received shall have no force or effect;

b. To the surviving wife or husband of the principal;

c. To the child or children of such principal (including adopted and natural children, but not stepchildren) and descendants of deceased children by representation;

d. To the parents of such principal or their survivors;

e. To the duly appointed executor or administrator of the estate of such principal; or

f. To other next of kin of such principal as may be determined by the Chief, PER/ER/RET to be legally entitled thereto; except that no payment shall be made under this paragraph until after the expiration of 30 days from the death of the principal.

Payment made under this section shall be a bar to recovery by any other person.

3 FAM 673.8-6 Designation of Beneficiary to Receive Foreign Service Contributions

(TL:PER-33; 5-31-85)
(State Only)

(See also section 3 FAM 673.4-8)

a. A designation should be made only if the participant wishes to name some other person or persons not mentioned in the prescribed order of precedence in section 3 FAM 673.8-5, or wishes to name a mentioned person in a different order or for a different share. Participants should bear in mind that changes in family status without a corresponding change in designation or cancellation of beneficiary may result in a settlement other than that intended.

b. A designation of beneficiary is for refund of compulsory and special contributions made to the Fund under section 3 FAM 671.4, that is, lump-sum payments under this section and refunds under section 3 FAM 673.9. A designation of beneficiary does not affect the right of any person who qualifies to receive survivor annuity benefits.

c. Upon request, participants will be furnished with a blank Form OF-137 (formerly JF-33), Designation of Beneficiary (3 FAM 673, Exhibit 673.8-6). The following shall apply:

(1) The designation of beneficiary shall be in writing, signed, and witnessed by two persons, and received by the appropriate agency before the death of the participant.

(2) No change or cancellation of beneficiary in a last will or testament, or in any other document not witnessed and filed as required by these regulations shall be recognized. Payment to a designated beneficiary will be made only to one designated by the document witnessed and filed in accordance with these regulations. Payment to the beneficiary so designated shall relieve the Department of liability to any other claimant.

(3) A witness to a designation of beneficiary is ineligible to receive payment as a beneficiary.

(4) A change of beneficiary may be made at any time and without the knowledge or consent of the previous beneficiary, unless the participant is restricted under appropriate State law from doing so. If PER/ER/RET is not notified of the existence of any such obligation before payment is made, payment to the beneficiary designated under these regulations relieves the Department of any further responsibility.

3 FAM 673.9 Refund of Contributions for Service in Excess of 35 Years

(TL:PER-33; 5-31-85)
(State Only)

Amounts deducted and withheld from basic salary of a participant from the beginning of the first pay period after the participant has completed 35 years of service, excluding unused sick leave, together with interest on the amount at the rate of three percent a year compounded annually from the date of the deduction to the date of retirement or death shall be applied toward any special contribution due under section 3 FAM 671.4-3, and any balance not so required is refunded in a lump-sum to the participant after separation or, in the event of a death in service, to a beneficiary in the order of precedence specified in section 3 FAM 673.8-5.

3 FAM 673.10 Offenses Barring Annuity Payments

(TL:PER-33; 5-31-85)
(State Only)

a. Sections 8311-8322 of title 5, U.S. Code, prohibit payment of annuity to employees and to their survivors where such employees are convicted of certain Federal offenses cited, or commit certain actions enumerated therein, or remain outside the United States for more than 1 year in order to avoid prosecution under the above cited sections.

b. Section 610(b) of the Act bars payment of annuity to a participant separated from the Service in whole or in part on the grounds of disloyalty to the United States.

3 FAM 673.11 Cost-of-Living Increases

(TL:PER-33; 5-31-85)
(State Only)

a. Unless otherwise provided by law, cost-of-living increases are granted once a year, effective March 1, to recognize any increase in the Consumer Price Index (CPI - all items--U.S. city average) published monthly by the Bureau of Labor Statistics, Department of Labor. If the CPI for December of any year shows a rise over the CPI for the December of the previous year, the following March 1 increase (reflected in checks mailed about April 1) will equal the percentage in the CPI.

b. Each percentage change in the CPI will be adjusted to the nearest one-tenth of one percent. If at any time there is no change or if the percentage represents a drop in the CPI, there will be no change in the adjustment of annuities.

c. The monthly installment of annuity adjustment under this section is fixed at the nearest dollar, except such installment shall, after adjustment, reflect an increase of at least \$1.

d. Each annuity payable to a former participant (except an annuity based on voluntary contributions) on the date an increase becomes effective under this section is increased by that percentage except the first increase to any former participant shall be equal to the product (adjusted to the nearest 1/10 of 1 percent) of 1/12 of the applicable percent change determined under parts a and b of this section, multiplied by the number of full months for which the annuity was payable from the Fund before the effective date of the increase (counting any portion of a month as a full month). Increases under this section will be applied to annuities of survivors as stated in section 3 FAM 673.5-5d.

3 FAM 674 UNASSIGNED

3 FAM 675 CIVIL SERVICE RETIREMENT SYSTEM

3 FAM 675.1 Authority

(TL:PER-514; 2-8-82)

(Uniform State/AID/USIA/Commerce/Agriculture)

The original Civil Service retirement law was approved May 22, 1920. This law and the numerous laws which have amended or modified it are listed on pages E-1 through E-13 of the Federal Personnel Manual Supplement 831-1, published as Appendix A (pages 195 through 207) to section 3 FAM 675. The following procedures augment Federal Personnel Manual Supplement 831-1.

3 FAM 675.2 Applicability

(TL:PER-514; 2-8-82)

(Uniform State/AID/USIA/Commerce/Agriculture)

Administrative responsibility and internal procedures described in the following material apply to the Departments of State, Agriculture, and Commerce, the Agency for International Development (AID), and the United States Information Agency (USIA). Questions not adequately covered in section 3 FAM 675 and 3 FAM 6100, Appendix A should be referred to the Retirement Division (PER/ER/RET) for State; the AID/W Division (M/PM/W) for AID; Retirement and Insurance Branch (MGT/PDR) or Office of Personnel (VOA/P), as appropriate, for USIA; the Personnel Division, Foreign Agricultural Service (PD/FAS) for Agriculture; and the Office of Personnel Administration, Foreign Commercial Service (FCS/OPA) for Commerce.

3 FAM 675.3 Employees Covered

(TL:PER-514; 2-8-82)

(Uniform State/AID/USIA/Commerce/Agriculture)

Subchapter S-2 of Appendix A (pages 9 through 11) contains information on coverage for Civil Service personnel. The following U.S. citizen members of the Foreign Service are covered by the Civil Service Retirement System (see section 900 for rules on Civil Service retirement for Foreign Service national employees):

- a. Chiefs of mission who are not participants in the Foreign Service Retirement and Disability System (see section 3 FAM 671.1-3); and
- b. Members of the Service serving under a noncareer limited appointment for a period in excess of 1 year.

3 FAM 675.4 Employees Excluded

(TL:PER-514; 2-8-82)

(Uniform State/AID/USIA/Commerce/Agriculture)

The following U.S. citizen members of the Service are excluded from Civil Service retirement coverage unless employment in an excluded category follows employment subject to the Civil Service Retirement System without a break in service or after a separation from the Service of 3 days or less:

- a. Members of the Service serving under an appointment limited to 1 year or less:
- b. Consular agents (see section 3 FAM 994.5);

c. Nonfull-time members of the Service without a prearranged regular tour of duty; and

d. Employees paid on a contract or fee basis, except employees who are citizens of the United States who are appointed by a contract between the employees and the Federal employing authority which requires their personal services and who are paid on the basis of units of time.

3 FAM 675.5 Filing Application

3 FAM 675.5-1 Overseas

(TL:PER-514; 2-8-82)

(Uniform State/AID/USIA/Commerce/Agriculture)

a. When a member of the Service at a post abroad wishes to apply for optional retirement, the member must fill out SF-2801, Application for Retirement, and submit it to the principal or administrative officer for forwarding to Washington. For State, applications from Foreign Service national employees are forwarded directly to the Payroll and Retirement Accounts Branch (M/COMP/FO/FD/PRA) and from all others to PER/ER/RET. For AID, applications are forwarded directly to the Overseas Division (M/PM/OS). For USIA, applications from Foreign Service national employees are forwarded directly to the Foreign Service National Employee Personnel Staff (MGT/PN) or the Office of Policy and Services (VOA/PS), as appropriate, and for all others to MGT/PDR or VOA/PS, as appropriate. For Agriculture, applications are forwarded directly to PD/FAS. For Commerce, applications are forwarded directly to FCS/OPA.

b. The responsible officer at the post should render every assistance to the member in completing the application by explaining in detail the types of annuities available, helping to select the type best suited to the member's circumstances, explaining the effect of making deposit or redeposit, and obtaining a statement from the member to accompany the application showing any unverified prior service with other agencies. Questions which cannot be answered by the post should be referred to the appropriate office listed in section 3 FAM 675.2.

3 FAM 675.5-2 In the United States

(TL:PER-514; 2-8-82)

(Uniform State/AID/USIA/Commerce/Agriculture)

When a member of the Service in the United States wishes to apply for optional retirement, the member must fill out SF-2801, Application for Retirement, for submission through the administrative or executive officer to PER/ER/RET for State; M/PM/OS for AID; MGT/PDR or VOA/P, as appropriate, for USIA; PD/FAS for Agriculture; and FCS/OPA for Commerce.

End Uniform State/AID/USIA/Commerce/Agriculture Regulations.

3 FAM 676 THROUGH 678 UNASSIGNED

3 FAM 679 SOCIAL SECURITY COVERAGE

3 FAM 679.1 General

(TL:PER-220; 3-21-68)

(Uniform State/AID/USIA)

Social security coverage applies to all employees not subject to the Civil Service Retirement Act or the Foreign Service Act of 1946, as amended, or to another Federal retirement system except:

a. Noncitizens employed outside the boundaries of the United States, the Virgin Islands, the Commonwealth of Puerto Rico, and the territories of Guam and American Samoa, and

b. Employees hired on a temporary basis for emergency work due to fire, storm, earthquake, flood, or similar emergencies. Certain short-term employees other than those indicated under item b will be subject to social security coverage. The appointing officer determines whether coverage under the Social Security Act applies and indicates coverage if applicable on the appointing document. For answers to questions not available in this regulation, employees should consult pamphlets such as "Your Social Security" (OAS-35) or others issued by the Social Security Administration, or such questions may be referred directly to the Social Security Administration, P.O. Box 1756, Baltimore, Maryland 21203.

3 FAM 679.2 Legal Basis and Coverage

(TL:PER-220; 3-21-68)

(Uniform State/AID/USIA)

a. Title II of the Social Security Act (Public Law 271, 74th Congress), amended by Public Law 724, 81st Congress, provides social security benefits for most Federal employees who are not subject to civil service or to any other Federal retirement system. Public Law 761, 83d Congress, and Public Law 97, 89th Congress, further amended the provisions with reference to Federal employees.

b. The Federal Insurance Contributions Act (FICA) provides for withholding taxes from the salaries of employees subject to the Social Security Act for deposit in the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund.

3 FAM 679.3 Social Security Contributions

(TL:PER-220; 3-21-68)
(Uniform State/AID/USIA)

Federal old age, survivors and disability insurance benefits are paid for by a contribution (FICA tax) based on the employee's earnings. The employee and the agency pay equal amounts of taxes to the United States Treasury Department regardless of the employee's age and even though the employee may be receiving social security benefits. Taxes are paid through payroll deductions.

Commencing with taxable years ending after 1967, the tax is figured on the first \$7,800 of an employee's gross annual salary (including salary plus differential for overseas employees). Under the 1967 amendments, employer and employee each pay at the rate of 4.4 percent for 1968; 4.8 percent for 1969-70; 5.2 percent for 1971-72; and 5.65 percent for 1973-75. The increase is necessary to finance the increased regular benefits and the hospital insurance program (medicare).

3 FAM 679.4 Eligibility for Social Security Benefits

(TL:PER-220; 3-21-68)
(Uniform State/AID/USIA)

To be eligible for social security benefits an employee must have worked long enough to be "insured" (i.e., eligible for benefits) under the Social Security Act. Under current legislation, an employee cannot become fully insured with less than six quarters (1-1/2 years) of work and he does not need more than 40 quarters (10 years) of coverage to be fully insured. An employee is currently insured if the employee has at least six quarters of coverage within 3 years before the employee dies or becomes eligible for retirement benefits. Exact definitions of the number of quarters an employee must work and how old he must be to be fully insured can be found in the current edition of OASDI-35.

3 FAM 679.5 Social Security Benefits

(TL:PER-220 3-21-68)
(Uniform State/AID/USIA)

a. Retirement Payments (Old Age Insurance Payments)

Upon reaching the age of 62 a fully insured employee is entitled to monthly retirement payments by filing an application with the Social Security Administration. However, if the employee elects to receive a benefit before age 65, the benefit will be reduced. Monthly payments are also made to dependents in accordance with definitions contained in OASI-35.

b. Survivors Insurance Payments

Monthly insurance payments may be made to members of a deceased employee's family if at the time of death the employee was insured. These payments are subject to the same earnings test as the one for retired employees (section 3 FAM 679.4 and OASI-35). Added eligibility qualifications are defined in OASI-35.

Survivors insurance payments cannot start until an application has been filed with the nearest district office of the Social Security Administration by a member of the deceased employee's family. Persons overseas address inquiries to P.O. Box 1756, Baltimore, Maryland 21203. The application should be filled out promptly inasmuch as back payments cannot be made retroactive for more than 12 months. In addition to monthly payments, a lump-sum payment up to three times the amount of the monthly retirement benefit but not to exceed \$255.00 is made to the widower or widow of a fully or currently insured employee if the employee was living with the employee in the same household. Otherwise the lump-sum payment is payable toward burial expenses. (See also 7 FAM 457.1-8.)

c. Disability Insurance Benefits

To be eligible for disability insurance benefits, a disabled person must have social security credit for at least 5 years of work in the 10-year period ending when the person becomes disabled. However, workers who become disabled in 1971 or later will need credit for more than 5 years of work.

3 FAM 679.6 General Provisions Regarding Benefits

(TL:PER-220; 3-21-68)

(Uniform State/AID/USIA)

a. Amount of Payments

The amount of monthly payments to which an employee and dependents and survivors are entitled depends on the employee's average earnings in covered employment and self-employment up to the time of death, disability or when the employee reaches retirement age, or up to the time of actual retirement, whichever is later. The amounts of these monthly payments will be determined by the Social Security Administration following application for payments.

b. The Effect of Continued Work on Receipt of Benefits

A beneficiary is required to report to the Social Security Administration when beginning work and expects to earn over \$1,680 in a year. All earnings from work, whether employment or self-employment, and whether or not covered by social security, must be considered. Investment income need not be considered.

A retired worker, or dependent of a disabled worker, or a survivor, who does not earn more than \$1,680 a year, can get benefit checks for all 12 months of the year. A retired worker's dependent who does not earn more than \$1,680 a year can get benefits for all the months the worker does. If in any year a beneficiary earns more than \$1,680, some or all of the benefits for months before the beneficiary reaches age 72 are withheld. The amount withheld depends on how much yearly earnings exceed \$1,680 and in how many months worked.

A person living abroad who receives social security benefits will have them suspended for any month the person is under 72 years of age, during which engaged in gainful employment (or self-employment) on more than 6 days during a calendar month, regardless of the amount earned. See the revised booklet SSA-C609(10-65), Social Security Benefits Outside the United States, for a discussion of this and other reasons for suspension of benefits to payees outside the United States.

c. Events That May Affect Benefits

A variety of changes in the personal, family, or legal status of a beneficiary may affect benefits, and each beneficiary is required to notify the Social Security Administration of the occurrence of such events. Each beneficiary is furnished instructions on what events to report and how to make such reports. The events to be reported are somewhat different if the beneficiary is outside the United States. (See 7 FAM 457.1-2.)

d. Refunds

No refund of social security taxes may be made except when payments have exceeded the tax requirements. Such refund is claimed on the employee's income tax return filed for the year in which the overpayment occurred. Information concerning a refund of FICA tax should be obtained from the District Director of Internal Revenue.

e. Appeals Rights

If a beneficiary is not satisfied with the Social Security Administration's action on the claim, the beneficiary may request that it be reconsidered; subsequently, the beneficiary may also request a hearing before a hearing examiner of the Bureau of Hearings and Appeals, and a review of the hearing examiner's decision by the Appeals Council. Ultimately, the beneficiary also has the right to bring a civil action in U.S. District Court.

3 FAM 679.7 Social Security Numbers

(TL:PER-220; 3-21-68)
(Uniform State/AID/USIA)

All U.S. citizen Federal employees must have social security numbers whether or not subject to social security coverage. All non-U.S. citizen employees performing service in the United States and subject to income and social security taxes must also have social security numbers. The number should be shown on Form W-4, Employee's Withholding Exemption Certificate, furnished the office maintaining employee accounts. A person not having a social security account number may obtain one by writing a letter or sending Form SS-5, application for social security number, to the Social Security Administration, P.O. Box 1756, Baltimore, Maryland 21203.

3 FAM 679.8 Report of Deductions

(TL:PER-220; 3-21-68)
(Uniform State/AID/USIA)

Each employee is furnished a statement of the total amount of earnings subject to FICA deductions and of the FICA deductions made, on Form W-2, Withholding Tax Statement, after the close of the calendar year. In the event of separation during the calendar year, form W-2 should be given the employee not later than 30 days after the last payment of salary is made.

Note: Section 804(6) of the Act defines "former spouse" with respect to duration of marriage as being married to a participant "for not less than 10 years during periods of service by that participant which are creditable under section 816." The Department interprets this as necessarily implying that the marriage must have covered a period of at least 1 day while the member of the Foreign Service was a participant in the System.